

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America, )  
 ) File No. 20-cr-262  
 ) (ADM/ECW)  
Plaintiff, )  
 )  
v. )  
 ) Courtroom 3C  
Fowzi Abdinasir Elmi, ) St. Paul, Minnesota  
 ) Friday, June 11, 2021  
Defendant. ) 11:14 a.m.  
 )  
-----

BEFORE THE HONORABLE ELIZABETH COWAN WRIGHT  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE  
**MOTIONS HEARING**

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**P R O C E E D I N G S**

**IN OPEN COURT**

THE COURT: Please be seated. Thank you.

All right. Good morning, everyone. We are here today for a motions hearing in the matter of United States versus Elmi, Case No. 20-cr-262 (ADM/ECW).

Let me cover COVID logistics before we take appearances. My current practice is that when lawyers are speaking or arguing to the court or examining a witness they may remove their masks, if they wish. Witnesses when testifying may remove their masks, if they wish. However, if anyone has concerns about this, you can let me know now. You don't have to tell me why. And we can get that sorted out.

I'll take your appearance, Mr. Wesley, and you can let me know if you have any concerns at the same time.

MR. WESLEY: Justin Wesley for the government, Your Honor, and we do not have any concerns about those protocols.

THE COURT: Okay. Thank you.

And thank you, Mr. Kushner.

MR. KUSHNER: Jordan Kushner representing Mr. Elmi, who is seated to my right, and we're prepared to live with the protocols.

THE COURT: Okay. And if you do have concerns,

1 let me know, though. All right? Okay. Thank you.

2 MR. WESLEY: Your Honor, I should note for  
3 appearances that I have do case agent -- Special Agent Eli  
4 Carpenter with the ATF here with me today.

5 THE COURT: Okay. All right. Thank you.

6 So good morning to all of you.

7 We have a number of motions before the court  
8 today, and I understand we also have a number of witnesses  
9 who will be testifying.

10 Before I get to the motions in detail, let me  
11 check with the government to see will -- will you still be  
12 calling nine witnesses?

13 MR. WESLEY: No, Your Honor. I had emailed the  
14 court indicating essentially I wouldn't put everyone through  
15 that, unless I absolutely had to.

16 I've had the opportunity to speak with  
17 Mr. Kushner. For today's purposes, there are three separate  
18 incidents, June 1st, 2019, January 2020 and then  
19 September 15th, 2020. I have three witness -- three  
20 witnesses prepared to go forward on the January 2019 and  
21 September 2020 incidents.

22 When trying to get people in from Oklahoma, the  
23 Oklahoma witnesses, I found out they were either in  
24 trainings or vacations. I thought perhaps I could have them  
25 sneak away and testify via Zoom, but upon speaking with

1 Mr. Kushner he does want the in-person appearance. So,  
2 unfortunately, I do have to respectfully request the court  
3 to set another hearing where I can secure those witnesses.

4 The only other witness issue is there is an  
5 Officer Joseph Grout, who took the statement of Mr. Elmi on  
6 June 1st of 2019. He's deployed on military orders. I do  
7 have his recorded interview, which I'm submitting to the  
8 court as an exhibit.

9 In an ideal world I would like to have the officer  
10 testify, especially given the challenge in District Court  
11 Docket 62, which is a challenge to any and all statements  
12 alleging that his client was either -- I think it was either  
13 too tired or too impaired by drugs or alcohol, in order to  
14 validate waiver of his rights. So in an ideal world, if  
15 Officer Grout is off of military orders, I would call him at  
16 the next motions hearing as well, rather than just asking  
17 the court to rely on the recorded interview. Frankly, I  
18 think the recorded interview is -- it's self-contained, it's  
19 self-explanatory, it speaks for itself, but, again, in an  
20 ideal world I would call Officer Grout.

21 Other than that, again, to try to streamline it so  
22 we are not calling nine witnesses, I do have the disk for  
23 the court. I've provided an exact copy to Mr. Kushner  
24 already. It has 17 exhibits. It essentially consists of  
25 body-worn cameras, some photographs, a consent to search

1 forms and things of that nature.

2           Given the challenge to any and all statements,  
3 I've spoken with Mr. Kushner asking if he could specify  
4 which statements, outside of the formal statements, as those  
5 are easy to identify, but there's lots of just interaction  
6 with the defendant while the investigation is proceeding.  
7 Mr. Kushner indicated that he was challenging all the  
8 statements. So what I've asked is that we introduce these  
9 exhibits. When Mr. Kushner is filing his paperwork, he can  
10 specify the statements that he's challenging and I will  
11 respond to those. If Mr. Kushner finds that there are  
12 statements that he wants to challenge that aren't on this  
13 disk, which the government believes is comprehensive, then  
14 he could add those later; and I would just stipulate to them  
15 via email or make a filing, as long as it was part of the  
16 regular discovery that was already provided.

17           So, Your Honor, with that long explanation, I  
18 think that's how the government -- and I don't want to speak  
19 for Mr. Kushner, but I think that's the plan for proceeding  
20 today.

21           THE COURT: Okay. So let me, first of all, return  
22 to the second hearing we'll be having and in particular  
23 Officer Grout, who is on military service. Do you -- it  
24 wasn't clear to me if you anticipated that he would be  
25 finished with his service anytime soon such that he would

1 appear at a hearing or if you and Mr. Kushner had discussed  
2 whether he -- whether either one of you felt that Officer  
3 Grout needed to testify at the second hearing.

4 MR. WESLEY: I hadn't spoken with Mr. Kushner  
5 about that particular issue. With military orders, I would  
6 like to say I know the date when he's coming back, but  
7 sometimes they're extended. I'm trying to indicate to the  
8 court that my normal practice would be to call him so that  
9 you would have some surrounding information about the  
10 interview and what Officer Grout himself personally observed  
11 and perceived. If he's not able to be there, I will not be  
12 asking for another continuance of the hearing because I do  
13 believe that the recording speaks for itself. It's not an  
14 ideal scenario for the government, but that's the situation  
15 that I'm in.

16 THE COURT: Okay. All right. Thank you for that  
17 clarification.

18 Let me turn then to Mr. Kushner. Is there  
19 anything you wanted to provide to the court or any concerns  
20 you have about the government's proposal with regard to the  
21 testimony today and then the subsequent hearing,  
22 Mr. Kushner?

23 MR. KUSHNER: I think it sums up what we  
24 discussed. I think there might be some confusion about the  
25 dates. I think my understanding is the dates of the stops

1 we're testifying about to are June 1st of 2019 and  
2 September 15th of 2020. I think Mr. Wesley might have  
3 confused June and January at some point in his explanation,  
4 but he's nodding his head, so I take it that's the  
5 situation.

6 My position on the statements was that, you know,  
7 if the -- we're challenging statements that the government  
8 seeks to introduce at trial so that if they are -- if any of  
9 these informal conversations are conversations that anyone  
10 introduces as evidence, then we would be challenging them.

11 THE COURT: All right. So I think I understand  
12 your position.

13 So here's what we will do with regard to, I guess,  
14 the second hearing. We will get a second hearing set, and  
15 my courtroom deputy will communicate with counsel about  
16 getting that scheduled. And then, of course, we'll have to  
17 work with the facility where Mr. Elmi is being held to make  
18 sure we can do it all in compliance with COVID protocols.  
19 So we'll get that on the calendar.

20 With regard to the statements, I understand the  
21 government has 17 exhibits.

22 I should check. Mr. Kushner, are you objecting to  
23 the introduction of any of those exhibits?

24 MR. KUSHNER: You know, I, I, I don't believe so.  
25 I haven't had a chance to go through all of them. So I



1 guess I'd like to -- I'd like to, you know, still reserve  
2 the chance to be sure about that. So I don't want to  
3 like -- I'm not ready to just blanket stipulate to all  
4 exhibits right now.

5 THE COURT: Okay. And, Mr. Wesley, were you  
6 planning on introducing them in the course of the testimony  
7 today?

8 MR. WESLEY: The -- the government does not intend  
9 on calling every single officer that took the actual  
10 body-worn camera. I did have sort of the overarching  
11 investigator review the cameras that I intended on  
12 submitting, and he was not at the scene, but he was the one  
13 who had the tip on June 1st. He reviewed the cameras. He  
14 knows all the people, knows the voices and knows that that  
15 was the scene, and he knows the people that were in the car  
16 from prior contacts. So I think that he can lay sufficient  
17 foundation, if I'm required to lay foundation.

18 The reason I'm submitting all 17 is because they  
19 are the ones that I believe capture potential statements and  
20 interactions with Mr. Elmi. And because I don't have a  
21 specific challenge to any particular statement, that's --  
22 that's how I figured would be the best way to proceed in  
23 this case, rather than to just say I'm not putting anything  
24 on because you haven't specified the challenge.

25 THE COURT: All right. So here's what we will do.

1 To the extent you are introducing the exhibits, Mr. Wesley,  
2 through the course of your examination of witnesses,  
3 Mr. Kushner can make his objection at the time that they're  
4 being introduced.

5 To the extent there are exhibits that you would  
6 propose to introduce and have admitted that aren't coming up  
7 in the course of the testimony, Mr. Kushner, if you intend  
8 to object to those, you can do that in your post-hearing  
9 submission. Obviously, then the government will have a  
10 chance to respond to that.

11 I sincerely hope we don't have to have a hearing  
12 on the admissibility of a particular exhibit if it was  
13 provided, but I want to have those 17 exhibits at least be  
14 available to Mr. Kushner as they are, because I will expect  
15 any challenges to a particular statement to be made with  
16 sufficient particularity so that the court can rule on them.  
17 In other words, the court is not going to review every  
18 statement that was made by Mr. Elmi to see if it was  
19 admissible or not if it's not been identified so that the  
20 court knows to review it, because that's just not a  
21 reasonable -- or I'm not even sure that's a possible task.

22 So I'll look for that in your post-hearing  
23 filings, Mr. Kushner, and will set deadlines for that later.  
24 Does that sound agreeable?

25 MR. KUSHNER: Yes, I can work with that.

1           Now, let me just bring up another issue that it  
2       looks like it's not going to come up at this testimony, but  
3       just to anticipate and avoid complications in the future.  
4       There was a custodial interrogation of Mr. Elmi in Oklahoma  
5       on January 21st of 2020. And I think -- I still don't have  
6       any -- I have a video of that interrogation, but I don't  
7       have any sound. So I have not -- I've still not been able  
8       to hear that interview.

9           MR. WESLEY: It's -- not to have too many  
10      conversations. What happened was, as noted in the filings,  
11      is that Mr. Kushner had a copy that he could open the video  
12      and see it, but the audio didn't work. I requested  
13      originals to be mailed, rather than to be electronically  
14      sent to me. Weird things happen sometimes. So I asked for  
15      the originals, got the original software. I confirmed that  
16      it worked on my computer. I sent him the new player, rather  
17      than giving him an MP4 converted clip, which I thought might  
18      be the problem. And so I sent that via USAfx I believe  
19      sometime in February. And I've been -- sorry, Your Honor,  
20      but I didn't confirm with Mr. Kushner. I didn't hear back,  
21      so I thought that solved the problem.

22           Mr. Kushner, I will definitely talk with you after  
23      the hearing, but we do have that working copy with the  
24      actual player that Oklahoma uses. It's a proprietary  
25      software and then causes a lot of problems sometimes. But

1 we have it. You are able to hear it. I provided it to you  
2 in February, I can't remember the date, but I will make sure  
3 that you are able to play that.

4 THE COURT: All right. So I will let counsel work  
5 out the details of how Mr. Kushner can hear as well as see  
6 the custodial interview. And since we're having another  
7 hearing that sounds like it's going to be focused on the  
8 Oklahoma piece of the case, we can address that, if needed,  
9 down the road.

10 All right. So I think that covers all of the  
11 preliminaries.

12 I do want to be clear, as I've stated, that to the  
13 extent there is a suppression motion with regard to any  
14 statements, the statements will need to be identified in the  
15 post-hearing briefing so that I know what I'm being asked to  
16 make a recommendation on.

17 Let me turn to the motions that are now before the  
18 court. We have Docket 50, which is the government's  
19 unopposed motion for discovery. And then we have Dockets 51  
20 to 58, which are a variety of motions filed on behalf of  
21 Mr. Elmi that are what I call the non-suppression motions,  
22 and then we have a couple of -- or several suppression  
23 motions as well. I have reviewed the parties' briefing with  
24 regard to Dockets 51 through 58, which are the  
25 non-suppression motions.

1           Let me -- let me see if counsel want to make any  
2 additional argument on those motions. And I'm going to  
3 begin with you, Mr. Kushner, because I know the government's  
4 response was the last brief. Do you have any additional  
5 arguments you wanted to make on those motions?

6           MR. KUSHNER: I don't have any additional  
7 arguments on the non-suppression motions. I do think they  
8 speak to themselves. There might be some discussion about  
9 timing issues with respect to early disclosure of *Jencks* and  
10 expert witnesses that probably want to --

11          THE COURT: Yeah. So why don't we do this. So  
12 I'm just going to walk through the -- you can sit down, and  
13 we'll go through it. And if counsel want to remain seated  
14 for this portion, that's fine, and that way you can be sure  
15 you are talking into your microphones.

16          So the government's unopposed motion for  
17 discovery, which is Docket 50, is granted.

18          The defendant's motion for release of *Brady*  
19 materials, which is Docket No. 51, that is -- sorry. I was  
20 just getting tangled up in my notes here. It wasn't really  
21 an issue I was debating, for the record. As to the  
22 *Brady/Giglio* materials, that motion, Docket No. 51, is  
23 denied in part as moot, based on the government's  
24 representation that it's complied with its obligations under  
25 *Brady, Giglio* and its progeny, but it is also granted in

1 part insofar as within ten days from today the government  
2 must disclose all of its *Brady/Giglio* information in its  
3 possession or of which it's become aware as of today's date  
4 and must promptly supplement its disclosure upon the receipt  
5 of any additional information.

6 Let me turn to the motion to compel disclosure of  
7 404(b) evidence. The government has proposed disclosure of  
8 that evidence two weeks before trial begins. The court  
9 finds that that's an appropriate deadline. So the motion is  
10 granted in part insofar as the government shall disclose its  
11 Rule 404(b) evidence two weeks before trial begins. The  
12 government is not required to disclose evidence that is  
13 inextricably intertwined with a charged crime. And then to  
14 the extent the government becomes aware of additional 404(b)  
15 evidence after it makes that disclosure, it should promptly  
16 disclose that evidence.

17 With regard to the defendant's motion for  
18 discovery, Docket 53, Mr. Kushner, I understood that motion  
19 to be primarily seeking discovery under Rule 16. Is there  
20 any additional argument you wanted to make as to that  
21 motion?

22 MR. KUSHNER: At this point in time I'm not aware  
23 of -- I'm not aware if there's -- if there's materials  
24 covered by the discovery motion that are available that have  
25 not been disclosed, other than informant information. So I

1 guess if I find out -- I have some reason to believe at some  
2 point that there's other items that are relevant that aren't  
3 disclosed, I guess I would raise it, but I have nothing  
4 further to raise now.

5 THE COURT: Okay. All right. Thank you,  
6 Mr. Kushner.

7 So the motion for discovery is granted in part and  
8 denied in part. I note that the government represents that  
9 it's complied with its obligations under Rule 16 and will  
10 continue to do so. The motion is granted insofar as the  
11 government is ordered to comply with its discovery  
12 obligations under Rule 16. To the extent the motion is  
13 seeking material outside of the scope of Rule 16, it is  
14 denied.

15 Let me turn to Docket 54, which is the motion for  
16 discovery of expert. You know, I know that the government  
17 proposed 16 days or -- excuse me -- 14 days before trial in  
18 its brief. But my concern with that timing is it doesn't  
19 leave any really time for rebuttal or very little time for  
20 rebuttal. So my standard is typically a disclosure of  
21 expert evidence 30 days before trial with rebuttals due 10  
22 days before trial.

23 Do either counsel have a concern with that timing?  
24 Mr. Wesley?

25 MR. WESLEY: No, Your Honor.

1 THE COURT: Okay. Mr. Kushner?

2 MR. KUSHNER: No.

3 THE COURT: Okay. So initial expert disclosures  
4 will be due 30 days before trial, and then any rebuttals  
5 will be due 10 days before trial. So that motion is granted  
6 insofar as I have set those deadlines for expert witness  
7 disclosures.

8 Okay. Let me turn to the motion for disclosure  
9 for grand jury transcripts, which is Docket 55. To the  
10 extent it is seeking transcripts of any witness who would  
11 testify today or at the anticipated hearing, I understand  
12 the government doesn't intend to offer any witnesses who  
13 testified. Do I have that right?

14 MR. WESLEY: That is correct, Your Honor.

15 THE COURT: Okay. So in view of that, the motion  
16 is denied as moot.

17 Now, with regard to the transcripts and statements  
18 as to witnesses who may testify at trial, I understand the  
19 government has represented that it will voluntarily provide  
20 any Jencks Act material no later than three business days  
21 before trial.

22 Does that address your request with this motion,  
23 Mr. Kushner, or are you seeking anything beyond that?

24 MR. KUSHNER: Was it three days before trial?

25 THE COURT: Three business days before trial.



1           MR. KUSHNER: Yeah, I mean, that, you know, three  
2       days -- you know, it comes up every time. It's -- sometimes  
3       the government generously volunteers to provide it more in  
4       advance, but, you know, it doesn't really provide for  
5       adequate preparation for trial. And I -- three days before  
6       trial I'm doing all kinds of things to get ready; and then  
7       if I get a pile of additional documentation, then it's  
8       really hard to prepare and so I -- and, you know, ultimately  
9       it might end delaying the proceedings or make them more  
10      inefficient. So I would urge a longer period of time, like  
11      two weeks.

12           THE COURT: Right. The problem, of course, and  
13      this comes up with regard to the Jencks Act motion, is that  
14      according to the Eighth Circuit I don't have the authority  
15      to order that. So based on the binding Eighth Circuit  
16      precedent, I'm not going to order the government to provide  
17      its Jencks Act material more than three days before trial,  
18      or really at any time, because I'm just not permitted to do  
19      so under the law. But I will certainly accept the  
20      government's representation that it will do it no later than  
21      three business days before trial and encourage the  
22      government to do it earlier, if possible, to avoid these  
23      inefficiencies and so on. Okay.

24           MR. WESLEY: Your Honor, just so the court knows,  
25      my personal habit is to disclose as much information as

1 possible, notwithstanding whether it's Jencks or not, and  
2 the only reason that I personally hold back the Jencks  
3 material is if there is a legitimate government interest in  
4 doing so. And I appreciate the Jencks Act. I don't -- I  
5 hope it does not change because there are many cases where  
6 there's personal safety at risk and there's other valid  
7 government reasons for withholding it until testimony.  
8 However, I mean, it's not like I'm going to throw hundreds  
9 of pages of discovery to Mr. Kushner three days before  
10 trial. He has -- he has the vast majority of the Rule 16  
11 material and a lot of the Jencks material as well, just not  
12 all of it at this point.

13 THE COURT: Okay. All right. Thank you,  
14 Mr. Wesley.

15 Mr. Kushner, is there anything else you wanted to  
16 say about the grand jury transcripts?

17 MR. KUSHNER: No.

18 THE COURT: Okay. All right. So let me turn to  
19 Docket No. 56, which is the motion to compel disclosure of  
20 informant. The motion that was filed was fairly short.

21 So, Mr. Kushner, do you have any additional  
22 argument that you wanted to make on this motion now that we  
23 have the government's brief and position as to the  
24 informants?

25 MR. KUSHNER: Well, the only informant I'm aware

1 of is the one who provided information that led to the  
2 June 1st, 2019, stop. And so I believe that's, you know,  
3 relevant. That could be *Brady* material and could go to the  
4 issues about whether there was probable cause for the stop.  
5 So I believe that the informant's identity and the  
6 statements -- the information about the informant and the  
7 statements that he or she made should be disclosed.

8 THE COURT: Okay. Mr. Wesley, do you want to make  
9 any additional argument as to this motion right now?

10 MR. WESLEY: I just stand on the -- this  
11 confidential reliable informant was not a material witness  
12 to the offense. And today I expect the court to hear from  
13 the officer who received the tip just that this particular  
14 individual was reliable, what the information provided was  
15 and that they relayed that information to another -- to  
16 other officers. So, therefore, we stand on the government's  
17 position that this person is not a material witness to the  
18 offense and should not be disclosed under the informant's  
19 privilege.

20 THE COURT: All right. Here's what we'll do for  
21 Docket No. 56. I'm going to take it under advisement.  
22 Obviously, there's going to be some testimony on this as to  
23 this motion.

24 And then, Mr. Kushner, to the extent you want to  
25 make additional argument, you can do it in your post-hearing

1       briefs. And then the government can respond to it after the  
2       testimony comes in.

3               So Docket 56 will be taken under advisement.

4               The motion to require government agents to retain  
5       rough notes, Docket 57, is granted to the extent that the  
6       government has already represented that it does not object  
7       to requiring law enforcement to retain and preserve their  
8       notes. And I guess if the government has not already done  
9       so, it is ordered to instruct the law enforcement officers  
10      involved to retain and preserve their rough notes.

11              And then, finally, we come to the motion for early  
12      disclosure of Jencks Act material, which is Docket 58. As  
13      I've already previewed, that motion will be denied because  
14      the court lacks the authority to order the production of  
15      Jencks Act material. However, the government has  
16      represented that it will provide any such material  
17      voluntarily no later than three business days before trial.

18              I think that covers the non-suppression motions.  
19      Is there anything I've missed, Mr. Wesley, from the  
20      government's perspective?

21              MR. WESLEY: I do not believe so, Your Honor.

22              THE COURT: Okay. Mr. Kushner, anything for the  
23      non-suppression motions that you wanted to raise?

24              MR. KUSHNER: Not that I can see.

25              THE COURT: All right. Well, then we can proceed

1 with the witness testimony then. Mr. Wesley, would you like  
2 to call your first witness?

3 MR. WESLEY: Yes, Your Honor, but, if I may, so I  
4 don't forget, may I present the flash disk that has the  
5 encrypted password on it that contains the 17 exhibits we  
6 discussed earlier?

7 THE COURT: Okay. Thank you. If you would like  
8 to give it to my law clerk, we'll -- all right.

9 The first time I got one of those, I had to go on  
10 YouTube and figure out how to get the flash drive out of the  
11 card.

12 MR. WESLEY: I try to be as helpful as I can in  
13 making sure that everyone is able to access it. I probably  
14 shouldn't, but I put a Post-it on it when I handed it to the  
15 clerk.

16 But in any event, Your Honor, the government does  
17 call Officer Kristopher Dauble from the Minneapolis Police  
18 Department as its first witness.

19 THE COURT: Okay. And while the agent is getting  
20 Officer Dauble, I will just confirm, Mr. Kushner, you've  
21 received a copy of those exhibits, correct?

22 MR. KUSHNER: Yes, I have.

23 THE COURT: Okay. Great. Thank you.

24 And then, Mr. Wesley, I think you are going to  
25 introduce them as we walk through, to the extent you can,

1 right?

2 MR. WESLEY: I will do that.

3 THE COURT: Or offer them, I should say. Okay.

4 And, Officer Dauble, if you want to come on up  
5 here. Our witness stand is over there, as you can see. And  
6 then we'll get you sworn in. My practice is that if a  
7 witness such as yourself wants to remove his mask while  
8 testifying, you are certainly welcome to do so. If you  
9 have -- if you don't want to remove it, you can say so; and  
10 then I'll see if anyone has any objection to it, and we will  
11 deal with it then.

12 THE WITNESS: Okay. Thank you.

13 THE COURT: Okay. If you could raise your right  
14 hand, please.

15 KRISTOPHER DAUBLE,  
16 called on behalf of the government, was duly sworn, was  
17 examined and testified as follows:

18 THE WITNESS: Yes.

19 THE COURT: All right. You may sit down, and then  
20 we'll get your name and proceed with the examination.

21 And, Officer Dauble, if you are going to -- are  
22 you going to put your mask on or not? You don't have to. I  
23 just want to know because I --

24 THE WITNESS: No.

25 THE COURT: You are not going to. Okay. That's

1 great. Then I don't need to check for objections, so --

2 All right. If you wanted to proceed, Mr. Wesley.

3 MR. WESLEY: Yes, Your Honor. I was just going to  
4 ask, Do you want me at the lectern or seated?

5 THE COURT: The lectern is fine, if you would  
6 prefer that.

7 MR. WESLEY: May I stay seated?

8 THE COURT: You may stay seated, yes. Okay.

9 DIRECT EXAMINATION

10 BY MR. WESLEY:

11 Q. Officer Dauble, could you please state your full name  
12 for the record?

13 A. Yeah. My name is Kristopher Dauble. It's  
14 K-R-I-S-T-O-P-H-E-R. And the last name is D-A-U-B-L-E.

15 MR. WESLEY: I'm sorry, Your Honor. You did just  
16 swear him in, right?

17 THE COURT: I did.

18 MR. WESLEY: Thank you.

19 BY MR. WESLEY:

20 Q. So, Officer Dauble, you work for the Minneapolis Police  
21 Department; is that right?

22 A. Correct.

23 Q. How long have you worked for the Minneapolis Police  
24 Department?

25 A. Since 2015.

1 Q. What is your current assignment?

2 A. I'm currently assigned to the gun investigations unit.

3 Q. And back in June of 2019, what unit were you in?

4 A. I was in the gang interdiction team.

5 Q. And at this point in time has the gang unit essentially  
6 been dissolved and many of those same persons now work in  
7 the weapons unit that you are currently in?

8 A. Yes, sir.

9 Q. How long were you in the gang unit back in 2019?

10 A. I began sometime in 2018.

11 Q. And are the primary duties of officers in the gang unit  
12 to investigate, try to be proactive about the investigation  
13 into crimes committed by gang members?

14 A. Yes.

15 Q. And essentially is that a lot of shootings and drug  
16 crimes and other violent offenses?

17 A. Correct.

18 Q. Before we get into other things about this case, is it  
19 true that the gang unit is a limited number of officers and  
20 you guys typically work very closely together; is that  
21 right?

22 A. Yeah, I think it was approximately 10 or 12 of us.

23 Q. I just want to talk to you about some foundational  
24 issues regarding some of the exhibits that the government is  
25 offering here today.



1           In preparation for your testimony, yesterday do  
2           you recall me showing you 17 exhibits regarding the  
3           incidents on June 1st, 2019, and September 15th of 2020?

4           A.    I do.

5           Q.    And with regard to the June 1st ones, there were 14  
6           exhibits there; is that right?

7           A.    Yes.

8           Q.    And while you may not specifically recall the file names  
9           of them, do you recall reviewing two videos, which are  
10          marked and offered to the court as Exhibits 1 and 2,  
11          belonging to Officer Nathan Sundberg?

12          A.    Yes.

13          Q.    And you've worked with Officer Sundberg for sometime?  
14          You recognize his voice; is that correct?

15          A.    Correct.

16          Q.    And just while you weren't at the scene of this  
17          incident, from viewing it could you tell that it was the  
18          incident described in the police reports?

19          A.    Yes, I could.

20          Q.    And could you -- could you recognize at least some of  
21          the five individuals that were in the car at the time?

22          A.    Yes, I did.

23          Q.    And we'll get into more detail later, but did you have  
24          prior familiarity with the defendant Fowzi Elmi?

25          A.    Yes.

1 Q. And did you have prior interactions and knowledge of his  
2 brother Fahad Elmi?

3 A. I did.

4 Q. And did you know Ish? Is it Abdulkadir, one of the  
5 passengers? I forget his last name.

6 A. Yes, I did.

7 Q. You had familiarity with him?

8 A. Yes.

9 Q. And then the other two passengers, did you have  
10 familiarity with them as well?

11 A. With the driver. Not so much the back passenger. I  
12 think Eden [phonetic] or Adan was the name of him.

13 Q. So four of the five individuals you had known and could  
14 recognize from the body cameras?

15 A. Yes.

16 Q. So moving on to Exhibits 3 through 5, did you review  
17 body-worn camera from the incidents belonging to Officer  
18 Russell Cragin?

19 A. Yes, I did.

20 Q. And, again, you recognized his voice, and from being  
21 captured on other body cameras you know he was at the scene  
22 as well?

23 A. Yes.

24 Q. Exhibit 6. Did you recognize the body-worn camera of  
25 Sergeant George Peltz?

1 A. Yes, I did.

2 Q. Exhibit 7. Did you recognize the body-worn camera of  
3 Officer Thomas Conlin from this incident?

4 A. Yes.

5 Q. Exhibits 8 and 9. Did you recognize those as body-worn  
6 cameras from this scene of Officer Joseph Grout?

7 A. Yes.

8 Q. Exhibit 10. Did you recognize this as the body-worn  
9 camera of the interview of Mr. Elmi conducted by Officer  
10 Grout?

11 A. Yes.

12 Q. From Exhibit Nos. 11 and 12, did you recognize those as  
13 the body-worn cameras as Officer William Martin?

14 A. Yes.

15 Q. And did you -- were you aware that as part of this  
16 investigation -- it's been marked as Exhibit 13 -- that  
17 there was a consents to search form filled out by Officer  
18 Grout to obtain DNA from Mr. Elmi; is that right?

19 A. Yes, there was.

20 Q. And do you recognize mister -- or Officer Grout's  
21 signature or the officer's signature on that form?

22 A. Yes.

23 Q. And there was also a photo taken. Did you recognize  
24 that as a body-worn camera photo taken of the gun in the  
25 trunk on June 1st of 2019?

1 A. Yes.

2 Q. I'm going to skip 15 because actually I don't think you  
3 reviewed that one -- that's Officer Miguel Martinez from the  
4 September date -- and also 16 because that's a photo from  
5 that incident.

6 But with regard to Exhibit No. 17, the interview  
7 of Mr. Elmi on September 15th of 2020, was that you who in  
8 fact conducted that interview?

9 A. Yes, it was.

10 Q. And was that a fair and accurate copy of the recording  
11 that you made of your interview with Mr. Elmi?

12 A. Yes.

13 MR. WESLEY: With that, Your Honor, I would offer  
14 Exhibits 1 through 14 and then Exhibit No. 17 through this  
15 witness.

16 THE COURT: Any objections?

17 MR. KUSHNER: I don't have any objection to  
18 Exhibit 17. Could I voir dire the witness as to the other  
19 exhibits?

20 THE COURT: 1 through 14?

21 MR. KUSHNER: Yeah. I'm not sure what the noise  
22 is. Did I do something here?

23 THE COURT: Mr. Wesley, how many of these exhibits  
24 are you planning on using in the course of your testimony?

25 MR. WESLEY: Officers -- actually, I plan on

1 producing none right now. For the court's review,  
2 Exhibits 1 and 2 are actually of Officer Sundberg's, and  
3 those will be important. There is sort of a camera angle  
4 issue with the drugs that were found in the backseat, and so  
5 that does involve other of these body-worn cameras.  
6 Frankly, they are all just different angles of the traffic  
7 stop at the scene. So I could also call Officer Sundberg  
8 and have him testify that this is fairly captured at the  
9 scene.

10 And I apologize, Your Honor. I thought these were  
11 just going to be introduced.

12 And, again, I'm not going to call every single  
13 person, but I can have especially Officer Sundberg who was  
14 at the scene review all of these and say this is from the  
15 scene, but I think Officer Dauble has already done that as  
16 well. Plus, we're at a motions hearing where the Rules of  
17 Evidence are obviously relaxed. I can represent to the  
18 court as well that these are all the body cameras from this  
19 incident. Officer Dauble has testified that they are. And,  
20 frankly, I'm not sure how there can be an objection to  
21 foundation at this point.

22 THE COURT: Yeah, Mr. Kushner, can you explain to  
23 me why you think you need to voir dire the witness on these  
24 exhibits?

25 MR. KUSHNER: To determine if there's adequate

1 foundation. I understand that the rules -- evidentiary  
2 rules are relaxed, but there are still standards the  
3 evidence has to be reliable, so -- it doesn't have to meet  
4 the standards that would a trial, but I don't think it would  
5 be accurate to say that there's no standards. So I'm just  
6 trying to make a record as to, you know, the degree of that  
7 knowledge that this witness has about those exhibits.

8 THE COURT: Do you think you're -- have you  
9 reviewed Exhibits 1 through 14?

10 MR. KUSHNER: Yeah, I can't promise that I  
11 reviewed every single one of them. I probably have. I  
12 certainly looked at -- certainly looked at most of them.

13 THE COURT: All right. Are you able to perform a  
14 brief voir dire as to Exhibits 1 through 14 collectively in  
15 view of the representations of what --

16 MR. KUSHNER: I wasn't planning to grill him about  
17 every detail of every single exhibit.

18 THE COURT: Okay. Why don't you begin your voir  
19 dire, and we'll see if -- we'll see what comes of it.

20 MR. KUSHNER: So, Officer Dauble, so I believe  
21 that exhibits -- Exhibits 1 through 9 -- and then what is  
22 it? I believe 1 through 9 and 11 through 12 are body  
23 cameras related to the vehicle stop and then subsequent to  
24 search and detention on June 1st of 2019.

25 THE WITNESS: I would suppose so. I don't have --

1 not specific information on the numbers, on the evidence  
2 numbers, so --

3 MR. KUSHNER: Okay. All right.

4 MR. WESLEY: I'll stipulate to that, Your Honor.

5 THE COURT: Okay.

6 MR. KUSHNER: And were you -- did you participate  
7 in any of that, those events?

8 THE WITNESS: I did not, no, not in person.

9 MR. KUSHNER: So your -- so your -- so your  
10 knowledge from the viewing of video would be based on your  
11 investigation, but it wasn't any personal observation on  
12 your part of any of those incidents?

13 THE WITNESS: Not that day, no.

14 COURT REPORTER: I cannot hear you, Mr. Kushner.

15 THE COURT: Yeah, Mr. Kushner, if you want to just  
16 remain seated. I know it feels awkward because we don't  
17 normally do it, but that way you can talk into the mic.

18 MR. KUSHNER: And did you -- did you have any role  
19 in the consent to search form that was purported to be  
20 signed by Mr. Elmi?

21 THE WITNESS: No.

22 MR. KUSHNER: That will be Exhibit 13.

23 Okay. All right. I don't have anything further.

24 You know, my -- our position would be that there  
25 isn't adequate foundation for all the -- for all the body

1 cam videos or the consent to search form.

2 And then also -- I'm sorry. One more question.  
3 You didn't participate in the interview of Mr. Elmi on  
4 June 1st of 2019?

5 THE WITNESS: That's correct.

6 MR. KUSHNER: So you didn't observe him -- or did  
7 you observe him at all on that date?

8 THE WITNESS: No. I wasn't physically present.

9 MR. KUSHNER: Okay. All right. So I would submit  
10 for Exhibits 1 through 14 that there isn't adequate  
11 foundation.

12 THE COURT: All right. Mr. Wesley, is there any  
13 additional testimony you'd like to elicit as to these  
14 exhibits?

15 MR. WESLEY: Just a little bit more to clarify to  
16 the court.

17 THE COURT: Certainly.

18 BY MR. WESLEY:

19 Q. Mr. Dauble, you weren't at the scene, but you obtained  
20 the tip that resulted in the stop of the vehicle; is that  
21 right?

22 A. Correct. And I was speaking with the officers on the  
23 scene prior to, during and after via phone.

24 Q. All right. So you were basically getting realtime  
25 information, although you didn't happen to be working at the



1 scene at that time?

2 A. Correct.

3 Q. Were you on or off duty at the time, actually?

4 A. I believe I was off duty.

5 Q. So you were essentially -- you got the tip because it

6 was your informant, but then you were relaying all the

7 information to officers because it was a time-sensitive

8 thing; is that right?

9 A. That's correct.

10 Q. You got realtime updates while it was all going down; is

11 that right?

12 A. Yes.

13 Q. And then because essentially Mr. Elmi -- you're the main

14 officer responsible for his investigation at the Minneapolis

15 Police Department; is that right?

16 A. I am.

17 Q. You did end up going in and reviewing all these videos

18 shortly after the incident, and then you also reviewed them

19 again yesterday; is that right?

20 A. I reviewed them several times.

21 Q. And you know from working with these people, from

22 knowing Mr. Elmi, that these are all accurate recordings

23 from that date?

24 A. Yes.

25 MR. WESLEY: Nothing further, Your Honor.

1 THE COURT: Exhibits 1 through 14 and 17 are  
2 admitted for purposes of this motions hearing and the  
3 pending motions.

4 BY MR. WESLEY:

5 Q. So jumping back, Officer Dauble, to your experience in  
6 the gang unit, essentially you investigated and tried to do  
7 the proactive investigations with various different gangs in  
8 the City of Minneapolis and who also operated out -- outside  
9 of the City of Minneapolis as well; is that right?

10 MR. KUSHNER: Objection. Leading.

11 THE COURT: Sustained.

12 BY MR. WESLEY:

13 Q. What types of gangs were you involved in investigating  
14 back when you were in the gang unit in 2019?

15 A. The vast majority of my time was spent on Somalia or  
16 East African gangs.

17 Q. And could you describe for the court what the major  
18 gangs were from Somalia or East African gangs at the time?

19 A. There were several numerous cliques, but the main  
20 umbrella gangs, what I call them, I guess, was 1627 Boys and  
21 the Somalia Outlaws.

22 Q. Could you tell the court where the 1627 Boys were  
23 essentially based, geographically-wise?

24 A. It would be downtown Minneapolis and the Cedar-Riverside  
25 area.

1 Q. And the Somalia Outlaws, did they have a location or  
2 were they just all over the place?

3 A. They were mostly in what we call the Fifth Precinct. So  
4 like Karmel Mall, along West Lake Street and like Pillsbury.

5 Q. And which one of these two gangs was established first?

6 A. I believe it was the Somalia Outlaws.

7 Q. And how would you describe the ages of the members of  
8 the Somalia Outlaws compared to the ages of the 1627 Boys?

9 A. They are much older and much more organized.

10 Q. Could you describe for the court -- well, let me first  
11 ask you. Were you also involved in investigations and  
12 police work regarding non-Somalia and East African gangs as  
13 well?

14 A. Yes, I was.

15 Q. So are you familiar with gangs like Young 'N Thuggin',  
16 YNT, the so-called high-end white gangs?

17 MR. KUSHNER: Objection. Leading.

18 MR. WESLEY: Your Honor, I'm just looking for  
19 preliminary information.

20 THE COURT: It's overruled.

21 THE WITNESS: Yes, I've done multiple gang  
22 investigations.

23 BY MR. WESLEY:

24 Q. Could you describe for the court any primary differences  
25 between the Somalia Outlaws and 1627 Boys compared to the

1 other gangs in Minneapolis?

2 A. At one point I believe both those gangs were considered  
3 the most violent in the city, based on their high-level  
4 propensity of violence and how quickly --

5 MR. KUSHNER: Objection. Lack of foundation and  
6 irrelevant.

7 THE COURT: The objection is overruled.

8 THE WITNESS: -- and how quickly the two gangs  
9 will retaliate for gang feuds.

10 BY MR. WESLEY:

11 Q. And particularly back in 2019, was there any other  
12 concerns besides shooting and homicides being committed by  
13 the Somalia Outlaws and 1627 Boys, criminal activity-wise?

14 A. Yes. They were committing countless burglaries,  
15 robberies and sales of narcotics.

16 Q. With regards to the sales of narcotics, was there any  
17 particular drug that both of those gangs were predominantly  
18 involved in?

19 A. I'm familiar that both of them predominantly sold MBox,  
20 what we call -- they call on the street, or Percs, fentanyl  
21 pills.

22 Q. All right. And so just so the court has a good idea of  
23 what these are, you referred to them as three different  
24 names, but are they all referring to the same drug?

25 A. Yes.

1 Q. What does that drug look like?

2 A. It's a very small, like almost sky blue, tablet with a  
3 capital M on one side that's encased in a square and a 30 on  
4 the opposite side pressed in.

5 Q. And is that pill meant to look like an actual drug?

6 A. Yes. They're pressed to be similar to commercially-made  
7 Oxycodone pills or Percocets.

8 Q. But based on your training, experience and all of the  
9 pills that you've seized off the street, have they been  
10 legitimate prescription pills or have they contained  
11 something else?

12 A. All of the ones I've recovered have contained fentanyl.

13 Q. Could you tell the court roughly when, maybe even the  
14 year, that you first encountered Mr. Fowzi Elmi, the  
15 defendant?

16 A. I couldn't give you a specific date, but I was working  
17 in the First Precinct, which is downtown, between 2016-2018,  
18 which I had numerous encounters with him during that time.

19 Q. And to be fair, these weren't all criminal  
20 investigation-type interactions?

21 A. Correct.

22 Q. But you had the opportunity to speak with Mr. Fowzi Elmi  
23 on numerous occasions; is that right?

24 A. Countless numbers.

25 Q. And did you also have the opportunity to speak with his

1 older brother Fahad Elmi?

2 A. Yes.

3 Q. So you are familiar with both of these brothers?

4 A. Yes, I am.

5 Q. As you moved to the gang unit and started having more  
6 investigative work with drug crimes and violent crimes, did  
7 Mr. Fowzi Elmi continue -- his name continue to come up in  
8 your investigations?

9 A. Yes, it did.

10 Q. Could you tell the court just in general why his name  
11 was on the radar?

12 A. I was always receiving either tips or receive -- I'm  
13 sorry -- reading police reports where his name was involved  
14 in narcotics and activity.

15 Q. Prior to the June 1st traffic stop, did you also receive  
16 similar information about his brother Fahad Elmi?

17 A. Yes, I have.

18 Q. And based on your training and experience and your  
19 knowledge and focus on these two gangs, the Somalia Outlaws  
20 and 1627 Boys, do you have an opinion as to whether the Elmi  
21 brothers were a member or an associate of either one of  
22 those groups?

23 MR. KUSHNER: Objection. Lack of foundation.

24 THE COURT: Mr. Wesley.

25

BY MR. WESLEY:

Q. So, Officer Dauble, how long were you in the gang unit, starting with the beginning date and then to the end date of its dissolution?

A. I believe it was end of summer 2018 until this past summer of 2020 -- 2020. I'm sorry.

Q. And even though you are in the weapons unit now, do you continue to investigate the same types of crimes and individuals that you did when you were in the gang unit?

A. It's essentially the same unit, just a different name. So we do the same thing.

Q. Are you familiar with the State of Minnesota's checklist and the number points where they determine whether or not the entity actually constitutes a gang?

A. Yes, I am.

Q. And in the past have you testified in cases as a gang expert to determine whether or not a person belongs to a gang or not?

A. Yes, I have.

Q. And in fact have you testified in cases specifically involving Somalia gangs?

A. Yes.

Q. And so, based on your training and experience, do you have an opinion as to whether the Elmi brothers, both the defendant and Fahad Elmi, were members or associates of

1       either the Somalia Outlaws or the 1627 Boys?

2       A.   Yes, I believe they are members of the 16 --

3               MR. KUSHNER:  Objection.  Lack of foundation.  He  
4       still hasn't established foundation as to being able to  
5       testify specifically as to Mr. Elmi's involvement in a gang.  
6       And there's also been this issue raised about this so-called  
7       checklist, which I think is highly -- which is highly  
8       suspect and certainly not any kind of scientific -- anything  
9       that's determined to be scientifically reliable and is  
10      subject, you know, to racial bias objections in the past.  
11      And so to make this kind of general testimony about  
12      Mr. Elmi's associations, based on the testimony that's been  
13      presented so far, is not supported.

14             THE COURT:  The court finds that the witness has  
15      adequately laid foundation both as to knowledge of certain  
16      of Mr. Elmi's activities and basis for knowledge with regard  
17      to certain gang activity, the criteria for gang activity and  
18      the specific gangs at issue.

19             Mr. Kushner, you can certainly make your arguments  
20      regarding your concerns, which I have heard, in your  
21      briefing, but the objection is overruled.

22             And you may answer.

23             THE WITNESS:  Yes, I believe Mr. Elmi is a member  
24      of the 1627 Boys.



1 BY MR. WESLEY:

2 Q. And did that include also his brother Mr. Fahad Elmi?

3 A. Yes.

4 Q. So you had all this information prior to the June 1st,  
5 2019, traffic stop?

6 A. Yes.

7 Q. Now, moving to that traffic stop, on that day you were  
8 not working at the scene, but you had received a call from a  
9 confidential reliable informant; is that right?

10 A. Correct.

11 Q. And could you just briefly describe for the court in  
12 general how important confidential reliable informants are  
13 and were in your work in investigating gang crimes?

14 A. I would basically say that without having reliable  
15 confidential informants that we weren't able to do our job  
16 as well as we are.

17 Q. And is it -- is it true or not true that you have  
18 different kind of levels of people that are providing  
19 information?

20 MR. KUSHNER: Objection. Leading.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, there is.

23 BY MR. WESLEY:

24 Q. So if a person comes to you, you don't know them and you  
25 have no idea who they are and they provide you with

1 information, do you give more or less scrutiny to -- on the  
2 information they are being -- they are providing to you?

3 A. A lot more scrutiny.

4 Q. When you say "confidential reliable informant," can you  
5 tell the court what you mean by that?

6 A. For the way I describe that is an informant who has  
7 worked with me in the past who has been found to be  
8 reliable, timely, accurate, and has provided information to  
9 me that has resulted in arrests and collection of evidence,  
10 narcotics, weapons.

11 Q. In this particular case, the CRI that gave you the tip,  
12 had you been working with that person for some time?

13 A. I'd say roughly six to eight months.

14 Q. And had this person provided you with tips in the past  
15 that you were independently able to verify that information?

16 A. Yes.

17 Q. Did it result in the recovery of firearms?

18 A. Yes.

19 Q. Did their information result in the recovery of drugs?

20 MR. KUSHNER: Objection. Leading.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, it did.

23 BY MR. WESLEY:

24 Q. Did it result in the arrests of individuals and  
25 successful prosecutions?

1 A. Yes.

2 Q. Could you please tell the court on June 1st of 2019  
3 generally what the information this particular CRI provided  
4 to you regarding Fahad Elmi, to be clear, not the defendant,  
5 but the brother?

6 A. The informant provided me with a vehicle description and  
7 plate number of a vehicle and a general area of where this  
8 vehicle was located and said that Mr. Elmi here, Fahad Elmi,  
9 was dealing narcotics, specifically MBox pills.

10 Q. And did the informant also provide you with any  
11 information about a weapon?

12 A. He said he believed they were in possession of a gun.

13 Q. And where was that gun to be found by officers,  
14 according to the CRI?

15 A. Inside the rear of the vehicle. In the trunk area. I'm  
16 sorry.

17 Q. So did you relay the specific car description, you know,  
18 make, model, color? Is that the information you received?

19 A. Yes, and the plate number.

20 Q. And you relayed that to your fellow officers who were  
21 working in the gang unit; is that right?

22 A. Yes, I did.

23 Q. Did you tell your fellow officers where the car may be  
24 found, based on what the CRI said?

25 A. Yes.

1 Q. And did you also relay the information that Fahad Elmi  
2 was dealing these MBox fentanyl pills out of the car?

3 A. Yes, I did.

4 Q. And did you also relay the information that there was a  
5 firearm said to be in the car?

6 A. Yes.

7 Q. And you mentioned earlier you were getting realtime  
8 updates. Were you made aware that the officers found the  
9 car in the general area of where the CRI said it would be?

10 A. Yes, they did.

11 Q. And without getting into too many specifics, was it  
12 relayed back to you that they ended up finding pills,  
13 finding a gun after the traffic stop?

14 A. Yes.

15 Q. And while you weren't there, you ended up, you know,  
16 counting the pills after the initial stop was concluded; is  
17 that right?

18 A. Yes, I did.

19 Q. And then you sent those for testing. So you had other  
20 involvement in the case afterward, right?

21 A. Yeah. After the fact, yes.

22 Q. But essentially you didn't do the interviews that were  
23 on the scene during the June 1st stop?

24 A. Correct.

25 Q. Did you continue your investigation into the Somalia

1 gangs, the East African gangs and the distribution of these  
2 fentanyl pills?

3 A. Yes, I did.

4 Q. Jumping ahead for purposes of this motion hearing to  
5 September 15th of 2020, again, this was an incident where  
6 you were initially not at the scene, right?

7 A. Correct.

8 Q. But when you came into work later in the morning, you  
9 were made aware of an incident involving Mr. Elmi and the  
10 Minneapolis Police Department around 3 a.m. on  
11 September 15th, 2020; is that right?

12 A. Yes.

13 Q. And you ended up interviewing Mr. Elmi about that  
14 incident about nine hours later, about shortly after noon;  
15 is that right?

16 A. Approximate time, yes.

17 Q. And you interviewed him?

18 A. You said did I?

19 Q. Yes. Did you interview the defendant Mr. Elmi?

20 A. Yes, I did.

21 Q. Did you read him his Miranda rights?

22 A. Yes.

23 Q. Did you record not only the reading, the waiver, but the  
24 entire interview?

25 A. I did.

1 Q. Was it audio-recorded?

2 A. Yes.

3 Q. And that's Exhibit No. 17 that you reviewed?

4 A. Yes.

5 Q. During this conversation, after reading him his Miranda  
6 rights, did he agree to speak with you?

7 A. He did.

8 Q. For the court, how would you describe the ability to,  
9 you know, hear Mr. Elmi's voice on the recording?

10 A. I would say it was fairly easy to hear.

11 Q. How would you describe the way Mr. Elmi speaks when you  
12 are in person and you've had all these conversations with  
13 him in the past? How would you describe the way he talks?

14 A. I'd say he's kind of -- talks a little slower, maybe not  
15 as higher volume as other people do.

16 Q. He's a little quieter?

17 A. Yeah.

18 Q. Does he mumble?

19 A. At times, yes.

20 Q. During the conversation during the audio recording did  
21 he discuss the pills that he was found to be in possession  
22 of earlier in the morning?

23 A. He did.

24 Q. What did he tell you about the pills?

25 A. He had told me that they were approximately 50 to 100

1 and he considered those personal use.

2 Q. Did he tell you how much he paid for these pills?

3 A. He did.

4 Q. How much did he pay for the pills?

5 A. He had told me \$15 apiece.

6 Q. And did he say that he got a deal on those for any  
7 reason?

8 A. He told me he got a deal on those because he buys in  
9 bulk.

10 Q. And did he -- did you guys discuss what those pills  
11 typically cost if you are going to buy them for personal use  
12 on the street?

13 A. Yes, we did.

14 Q. How much did those fentanyl pills typically cost on the  
15 street?

16 A. Average price is 30 to 35 apiece.

17 Q. But he paid 15, he said?

18 A. He said that, yes.

19 Q. Did he also acknowledge his arrest in Oklahoma in  
20 January of 2020?

21 A. He did.

22 Q. But you guys didn't get into that too much, right?

23 A. We did not.

24 Q. Now, during -- and this was a relatively brief  
25 conversation with Mr. Elmi. This only lasted several

1 minutes; is that right?

2 A. 10 to 15 minutes.

3 Q. And during this conversation did you notice anything  
4 about Mr. Elmi that was different from all the other times  
5 that you interacted with him?

6 A. No.

7 Q. Did he appear to you that he was overly tired or sleepy?

8 A. No.

9 Q. Obviously, you knew the incident occurred at 3 a.m. Did  
10 he appear tired at all to you?

11 A. I would say he appeared tired, but not to the point  
12 where he couldn't function.

13 Q. Did he appear to understand your questions by responding  
14 to them?

15 A. Yes, he did.

16 Q. Did you notice anything strange about his demeanor? For  
17 example, did he appear to be under the influence of any  
18 drugs or alcohol?

19 A. Not that I could tell.

20 Q. So can you tell the court, compared to any other  
21 conversation you've had with Mr. Elmi, which, again, you  
22 have mentioned as being countless, was he acting or  
23 responding to you in any different way than he has in the  
24 past?

25 A. No. I'd say that conversation was an accurate display



1 of how I had normally talked to him previously.

2 Q. And you did have other -- you did have another role,  
3 like you counted the pills in this case and sent them to the  
4 BCA; is that right?

5 A. I did.

6 Q. But for the purposes of this hearing, does that  
7 essentially include your involvement with these stops and  
8 the statements that were made resulting in Mr. Elmi and the  
9 indictment in this case?

10 A. Yes.

11 Q. Thank you, Officer Dauble. I don't have any further  
12 questions for you at this time.

13 THE COURT: Okay, Mr. Kushner.

14 MR. KUSHNER: One second.

15 THE COURT: Sure, you can have a minute.

16 Officer Dauble, those bottles of water are clean,  
17 if you're looking for a drink. We're not doing cups right  
18 now.

19 THE WITNESS: All right. Thank you.

20 THE COURT: And I should say they contain water.

21 THE WITNESS: Thank you.

22 MR. KUSHNER: I'll go to the lectern, if that's  
23 okay.

24 THE COURT: Yeah, that would be fine, Mr. Kushner.  
25 Come on up to the lectern, if you are comfortable with that.

CROSS-EXAMINATION

BY MR. KUSHNER:

Q. Good afternoon, Officer Dauble. I was looking at my watch to confirm it was the afternoon. I don't think we met before. I represent Mr. Elmi.

So on the -- first of all, we'll go over the stop back on June 1st of 2019. And so you testified that you were not on duty when that stop happened.

A. That's correct.

Q. And what kind of realtime updates did you get on the stop?

A. I was making the call to Sergeant Peltz, who was the head of the team that night. And then --

Q. Who?

A. Sergeant Peltz, George Peltz. He was the sergeant working that night. And then as soon as the stop was concluded, everything was under control, what we call code four, he gave me a call back immediately and told me what they had found.

Q. So you didn't actually -- you weren't actually observing anything that happened on video?

A. Not at -- not live, no.

Q. And were you -- you weren't tuned into the radio at the time. There's a radio. And, I mean, normally if you are on duty, you might monitor what's going on based on the

1 electronic transmissions or radio calls; is that right?

2 A. Yes. I had my portable radio with me and turned on  
3 during that, but I wasn't actually personally there.

4 Q. All right. And so you had -- the radio didn't -- didn't  
5 like broadcast what was happening, you know, as it was  
6 happening?

7 A. I'm confused on what you are asking.

8 Q. What was, what was, what was, the radio -- what was --  
9 what was stated on the radio? What kind of information do  
10 you get from having the radio on?

11 A. Just I turned it on once I give them information. I  
12 wanted to hear if anything happened, I guess, with it.

13 Q. And so, what, can anybody hear what happens based on  
14 listening to the radio?

15 A. I just heard them air the traffic stop, that they found  
16 the car.

17 Q. Okay. But nothing -- none of the actual interactions  
18 that took place at the stop?

19 A. Correct.

20 Q. Okay. Now, you said that, you know, this stop initiated  
21 because you got a call from this informant.

22 A. That is correct.

23 Q. And what -- can you identify any cases in court that,  
24 you know -- you said he brought about successful  
25 prosecutions?

1 A. Yes.

2 Q. Can you identify any cases that were successfully  
3 prosecuted as of the time that this incident happened based  
4 on his information?

5 A. Not -- I'm sorry.

6 MR. WESLEY: I would just object. I don't object  
7 to the question being asked, can he identify the cases, but  
8 I don't want him identifying any actual cases, because that  
9 could lead to the identity of the informant. So my  
10 objection is to the informant's privilege.

11 THE COURT: All right. So you can answer this  
12 question yes or no, Officer --

13 THE WITNESS: Dauble.

14 THE COURT: I apologize. Yes, Dauble. I was  
15 going to say Daubert, but I knew that wasn't right. Officer  
16 Dauble.

17 And then, Mr. Kushner, if you have a follow-up  
18 question, then I'll deal with the objection then.

19 THE WITNESS: So can you just reask your question  
20 one more time, please?

21 BY MR. KUSHNER:

22 Q. Are you able to identify specific cases that were --  
23 have been successfully prosecuted as of the date of this  
24 incident on June 1st, 2019, based on information provided by  
25 this informant?

1 A. Yes, I could.

2 Q. And how many?

3 A. Without looking at my case files, I couldn't give you an  
4 exact number.

5 Q. Was it more than five?

6 A. I would say so, yes.

7 Q. And when you say successfully prosecuted, do you mean  
8 that there were actual convictions based on information he  
9 provided or just that people were arrested?

10 A. On several there was charges brought by Hennepin County.  
11 I haven't followed these cases through the court process, so  
12 I couldn't tell you convictions or -- at this point.

13 Q. So I think, at least for us who are officers of the  
14 court, a successful prosecution would mean a conviction.  
15 But you don't know of any convictions that had been had as a  
16 result of the confidential informant's information as of  
17 June 1st of 2019?

18 A. I think they were all going through the process at that  
19 time.

20 Q. You don't know what the results of any -- you don't know  
21 if any of them had even been completed at that time?

22 A. I -- I don't. I'm not aware of it.

23 Q. All right. But you said you had been working with this  
24 person for six to eight months before the incident?

25 A. Approximate time, yes.

1 Q. All right. And are you aware that normally the court  
2 process takes longer than that?

3 A. It can, yes.

4 Q. And so you don't know how many cases -- how many cases  
5 he actually provided to you?

6 A. Off the top of my head, no.

7 Q. Do you have that information listed someplace?

8 A. I would just have to look at the police reports that  
9 I've filed in the past.

10 Q. Okay. And without naming any cases, could you name any,  
11 if you were asked to, could you name anyone, any person that  
12 was prosecuted as a result of this confidential reliable  
13 informant as you sit here today?

14 MR. WESLEY: I'm going to object as to the  
15 informant's privilege, Your Honor, because that could lead  
16 to the identification of the informant.

17 MR. KUSHNER: And I was very specific in my  
18 question. I didn't ask him to identify. I'm just asking  
19 foundation --

20 COURT REPORTER: I cannot hear you, Mr. Kushner.

21 MR. KUSHNER: I'm just asking -- let me take off  
22 my mask.

23 THE COURT: Take your time. It's easy to get  
24 tangled up.

25 MR. KUSHNER: So, yeah, I asked my question

1 specifically to lay foundation and that I didn't ask him at  
2 this point to identify people. I just asked him if he would  
3 be able to identify specific people if he was asked.

4 THE COURT: Why don't we have you reask the  
5 question so that we can all hear it clearly, and then we  
6 will see if there's an objection or not.

7 MR. KUSHNER: All right.

8 BY MR. KUSHNER:

9 Q. If -- without identifying anyone, would you be able to  
10 identify specific people who were -- who were prosecuted as  
11 a result of information provided by this informant prior to  
12 June 1st of 2019?

13 A. I feel like you are asking me two questions there,  
14 without -- without identifying and specifically identifying.

15 Q. Well, I guess I'm asking if you could identify any  
16 specific people.

17 A. Could I? Yes.

18 Q. How many?

19 A. Like I said, without reviewing my police reports in  
20 front of me, I couldn't give you a finite number.

21 Q. My question is without reviewing or -- if I asked you to  
22 identify people, you know, without reviewing your police  
23 reports, just based on your recollection here today, would  
24 you be able to identify any specific people?

25 A. Yes, I would.

1 Q. And how many?

2 A. Well, I guess that I couldn't give you a finite number.  
3 I'd say probably over ten.

4 Q. You would be able to name them right here -- right here  
5 and now?

6 A. Yes, likely. Several of them.

7 Q. So how many could you name? I mean, without naming  
8 anyone, if you were to answer that question, tell me how  
9 many names you could give us.

10 A. I just told you I could do several.

11 Q. Well, count them in your head and tell me how many.

12 A. I guess I'm not sure what you are looking for. Off the  
13 top of my head, you know, four or five right away.

14 MR. KUSHNER: You know, I understand that the  
15 court wouldn't want the -- want anyone identified in open  
16 court, but I would like to pursue that for purposes of the  
17 witness's credibility to see if he can actually identify  
18 people.

19 THE COURT: I'm not going to waive the informant's  
20 privilege based on the testimony and -- that we have so far  
21 in the absence of briefing. So, Mr. Kushner, this is  
22 already the subject of one of your motions, I believe,  
23 correct?

24 MR. KUSHNER: I did ask to -- for information  
25 about the informant.



1 THE COURT: Right. And if you are asking for  
2 advance permission to get the names of other informants in  
3 other cases -- sorry -- other cases that have been  
4 successfully prosecuted, the government has made an  
5 objection to that. I guess I'm not going to give you  
6 advance permission to do that. If you want to ask the  
7 question and the government objects, I will deal with the  
8 objection.

9 BY MR. KUSHNER:

10 Q. Okay. What, what -- which people who were successfully  
11 prosecuted as of June 1st, 2019, as a result of this  
12 informant's information? Can you name those people?

13 MR. WESLEY: Objection, Your Honor, because  
14 informant's privilege.

15 THE COURT: The objection is sustained.

16 BY MR. KUSHNER:

17 Q. All right. And so -- so on June 1st of 2019 did you  
18 call this informant or did he or she call you?

19 A. The informant called me.

20 Q. And who did the -- which people did the informant  
21 identify as driving, being in -- being present in this  
22 vehicle?

23 A. I was specifically told that Fahad Elmi and several  
24 others were in this vehicle.

25 Q. Okay. Did he -- did he name anyone else besides Fahad

1 Elmi?

2 A. I don't recall.

3 Q. Did they -- you said that the person said that there  
4 were pills in the vehicle?

5 A. Yes.

6 Q. And what kind of pills? How did you describe the pills?

7 A. They were described to me as being Percs or MBox. I  
8 can't remember the exact term.

9 Q. Okay. And did he -- did he say where the pills were?

10 A. The informant did not tell me exactly in the car where  
11 they were.

12 Q. All right. It's your testimony, though, that he told  
13 you that the firearm was in the trunk?

14 A. Yes, the informant told me that.

15 Q. Did you previously prepare a police report shortly after  
16 the incident that described what the informant told you?

17 A. I believe I completed one the next day when I got to  
18 work.

19 Q. Okay. And so that would have -- and so the purpose of  
20 providing a police report as soon as you can after the  
21 incident is probably because your recollection is fresh at  
22 that time; is that right?

23 A. Yes.

24 Q. All right. Did you happen to review the police report  
25 that you prepared prior to your -- in preparation for your

1 testimony today?

2 A. I did a few -- several days ago, yes.

3 Q. Okay. The police report didn't mention anything about  
4 where the firearm was located, did it?

5 A. I don't believe so.

6 Q. Okay. So if I -- if I told you the police report just  
7 says that there's a firearm in the vehicle, but it doesn't  
8 say anything about where it's located in the vehicle, you  
9 would agree with that?

10 A. Yes.

11 Q. And that would have been relevant information to include  
12 in your police report, if he'd actually given you that  
13 information?

14 A. It depends, I suppose.

15 Q. Well, the prosecutor has elicited testimony that the  
16 firearm was found, you know, where the informant said it  
17 would be found. Do you recall that testimony?

18 A. Yes.

19 Q. And but -- so it would be relevant if the informant  
20 provided you information about where the firearm was because  
21 it would confirm his reliability, right?

22 A. That I suppose would be accurate, yes.

23 Q. Okay. But you didn't include anything in the report  
24 about where the informant claimed the firearm was located?

25 A. Correct.

1 Q. And that's because he didn't -- he didn't give you that  
2 kind of specific information?

3 A. No, that's not correct.

4 Q. So that's something -- you're just testifying from your  
5 recollection more than two years since the incident?

6 A. Yes.

7 Q. And that's something that you didn't actually include in  
8 your police report at the time.

9 A. Yes; I did not.

10 Q. And it was more than two years ago, right?

11 A. Doing the math, yeah.

12 Q. Okay. You said that you're very familiar with Mr. Elmi.  
13 Can you specify when you first met him, you know, date-wise  
14 or like, you know, down to a month or a year?

15 A. I couldn't give you a specific even month, I suppose. I  
16 was assigned to the -- what they call Cedar-Riverside beat  
17 car I think roughly in 2017, which I spent most of my time  
18 where he used to live.

19 Q. Okay. So -- so it would have been in 2017 or afterwards  
20 that you first met him?

21 A. It could have been before, but I know I spent a majority  
22 of my time in his neighborhood in 2017.

23 Q. You can't, as you sit here, you can't testify as to the  
24 specific -- even the specific year when you first met him?

25 A. No, I can't. I've met thousands of people.

1 Q. Could it have been 2018?

2 A. I knew him before I got to the gang unit in 2018.

3 Q. And when in 2018 did you get to the gang unit?

4 A. I think I testified it was the end of the summer, maybe  
5 August.

6 Q. And you -- did you have -- how many contacts did you  
7 have with him after you got into the gang unit?

8 A. I couldn't give you a finite number. I mean, countless  
9 at this point.

10 Q. And when you say contacts, did you actually speak with  
11 him or you just -- you drove through?

12 A. Both.

13 Q. And are you aware that Mr. Elmi has an addiction to  
14 fentanyl?

15 A. He alleged that to me once, yes.

16 Q. Okay. You don't have any personal knowledges or  
17 observations about whether or not he's addicted?

18 A. I'm not a medical professional.

19 Q. Did you ever observe him using drugs?

20 A. Using, no.

21 Q. You did find him to be in possession of drugs?

22 A. On several occasions.

23 Q. Did he tell you that he was a user?

24 A. Excuse me?

25 Q. He did tell you that he was a user?

1 A. He told me that, yes.

2 Q. And you've, I mean, you've followed the case since he  
3 was arrested, right?

4 A. Yes.

5 Q. And so you are aware that he's made attempts at  
6 treatment?

7 A. I'm not aware of that.

8 Q. And so during the times that you -- that you encountered  
9 Mr. Elmi, you don't know whether he was under the influence  
10 of drugs or not?

11 A. I couldn't tell at that time, no.

12 Q. Do you know what the -- are you familiar with the  
13 effects of fentanyl?

14 A. I am.

15 Q. And what kinds of effects does it have?

16 A. It's an opiate, so it's more of a depressant, makes  
17 people slow down a lot, kind of mopey.

18 Q. And you testified that Mr. Elmi talks slower than the  
19 average person?

20 A. Yes, I did.

21 Q. And he also speaks at a lower volume?

22 A. Yes.

23 Q. And would that be consistent with someone using opiates?

24 A. It could be, yes, but the times I talked to Elmi every  
25 single time he acted that way, unless he was under the

1 influence every time I spoke to him.

2 Q. He could have been under the influence every time,  
3 right?

4 A. He didn't exhibit any other signs other than his speech  
5 or -- I mean, he wasn't stumbling, he wasn't falling asleep  
6 when I talked to him, like most users do.

7 Q. This interview you had with him on September -- was it  
8 September 16th of 2020?

9 A. I'm not -- if that's the specific date, then --

10 Q. It was only -- it was only -- it was only about  
11 15 minutes, right?

12 A. Yes, sounds about right.

13 Q. So on -- so going to -- continuing with the  
14 September 15th of 2020, do you know what time Mr. Elmi was  
15 arrested that night?

16 A. I believe the counsel here said it was approximately  
17 three in the morning.

18 Q. That he was arrested then?

19 A. I believe. I don't have that approximate time in front  
20 of me.

21 Q. And do you know what time you interviewed him?

22 A. I believe it was afternoon sometime.

23 Q. Okay. Could it have been at night?

24 A. It was during -- I work during day hours, so it would  
25 have been during the day.

1 Q. So what shift did you work that -- at that time?

2 A. I usually work 9 to 5 or so.

3 Q. And had Mr. Elmi been in jail from the time of the  
4 incident where he was arrested until you met with him?

5 A. I believe so, yes.

6 Q. And did you meet with him in the jail?

7 A. I did.

8 Q. And at the time he spoke slowly and in a low volume?

9 A. As other times in the past, yes.

10 Q. And he was also sometimes hard to understand?

11 A. To hear.

12 Q. To hear?

13 A. Yes.

14 Q. And are you aware that shortly after that he was taken  
15 to the hospital for withdrawal symptoms?

16 A. No, I'm not aware of that.

17 Q. You're not denying it? You just don't know either way?

18 A. I don't -- I'm not -- have access to jail records.

19 MR. KUSHNER: I just want to have a moment.

20 THE COURT: Okay.

21 BY MR. KUSHNER:

22 Q. Did you tell mister -- in this interview on  
23 September 15th or 16th, 2020, did you tell Mr. Elmi that he  
24 looked fucked up?

25 A. I can't recall specifically what I said without



1 listening to the audio right now.

2 Q. So you haven't listened to it recently?

3 A. Not this morning, no.

4 Q. Now, was your whole encounter with him recorded, or did  
5 you turn the recorder on at a certain point?

6 A. I turned the recorder on once I entered -- or got to the  
7 cell door, because the sergeant in the jail had the key to  
8 the door, but I think you can hear that in the audio.

9 MR. KUSHNER: Yeah, I have no other questions at  
10 this time.

11 THE COURT: Thank you, Mr. Kushner.

12 Mr. Wesley, do you have any redirect?

13 MR. WESLEY: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WESLEY:

16 Q. Officer Dauble, just to be very clear about what the  
17 information was that you received from the CRI on June 1st  
18 of 2019, could you tell the court what that information was?

19 A. I was -- received information from a plate number,  
20 vehicle description, approximate location. A vehicle was  
21 located where Fahad Elmi was selling or possessing MBox  
22 pills, and they had a firearm in the vehicle.

23 Q. So with regard to the firearm, the description was it  
24 was in the vehicle; is that right?

25 A. Yes.

1 Q. But there was no specific area of the vehicle that the  
2 informant said it would be found?

3 A. It was in the vehicle, is what I was told.

4 Q. Okay. Turning your attention to a different subject,  
5 you mentioned, you know, in addition, fentanyl users falling  
6 asleep. Backing up a little bit, have you encountered  
7 persons who you know who have recently ingested fentanyl and  
8 had the opportunity to observe them and speak with them?

9 A. Yes, I have.

10 Q. And what types of things are pretty common amongst  
11 persons that use and abuse these MBox or Percs or whatever  
12 they call them, but these blue little pills with the M on  
13 them? What are some of the common characteristics of a  
14 person who use these fentanyl pills?

15 A. So these pills have fentanyl, which is -- I can't give  
16 you the exact number, but so many times stronger than, say,  
17 heroin or other depressants that are on the street, so they  
18 hit a lot harder on people. The effects are a lot stronger.  
19 So most people are nodding off, where they can't stay awake.  
20 They can't normally walk or function like a normal person  
21 would.

22 Q. Did you notice any of those indicia of fentanyl  
23 impairment when you were speaking with Mr. Fowzi on  
24 September 15th of 2019?

25 A. No. At the time he was sitting on a bench and was able

1 to hold himself upright and wasn't swinging side to side or  
2 acting like he was under the influence.

3 Q. Now, you can't recall exactly what was said on the  
4 recording, but let's say -- well, what did you know about --  
5 strike that. Sorry. What did you know about why Mr. Elmi  
6 was in the jail at the time you interviewed him on  
7 September 15th of 2019?

8 A. So prior to going to the jail, I read the responding  
9 officers' police reports and watched their body camera  
10 footage, so --

11 Q. So were you aware that Mr. Elmi was in a vehicle that  
12 was involved in a car crash?

13 A. It was a minor accident, yes.

14 Q. So if you did say something to the effect of "You look  
15 fucked up" -- and I'm not saying you said it. Frankly,  
16 whether you did or not, it doesn't matter. But if you did  
17 say something like that, was it in reference to him looking  
18 like he was under the influence of fentanyl?

19 A. No.

20 Q. And just with regard to the timing of it, if Exhibit 17  
21 says you note a time of 12:12, what time would that be?

22 A. That would be 12:12, afternoon.

23 Q. p.m.?

24 A. p.m., correct. Yes, yes.

25 Q. Because you work during the day?

1 A. Yes.

2 Q. Thank you, Officer Dauble. I don't have further  
3 questions for you at this time.

4 A. Thank you.

5 THE COURT: All right. Mr. Kushner, do you have  
6 any recross based on that redirect?

7 MR. KUSHNER: Very briefly.

8 RECROSS-EXAMINATION

9 BY MR. KUSHNER:

10 Q. Is there any way that you observed Mr. Elmi that would  
11 lead you to believe that he looked messed up?

12 A. Could you --

13 MR. WESLEY: I'm sorry, Your Honor. I couldn't  
14 hear the question.

15 BY MR. KUSHNER:

16 Q. Is there anything you observed about Mr. Elmi that would  
17 have led you to believe or say that he looked messed up?

18 A. I didn't see anything like physical injuries, if that's  
19 what you mean by "messed up."

20 Q. Okay. And so if you did say that, as you sit here, do  
21 you know what you would be referring to?

22 A. No. I -- Mr. Elmi and I kind of joke around a lot.  
23 We've had a decent relationship up until now, you know.  
24 We're likely going back and forth.

25 Q. I see. But did you normally say things if you don't

1 mean them?

2 A. No, I don't.

3 MR. KUSHNER: Okay. I have no further questions.

4 THE COURT: Okay. Thank you.

5 Officer Dauble, you may step down. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: And, Mr. Wesley, if you want to call  
8 your next witness.

9 MR. WESLEY: I do, Your Honor. I'm actually --  
10 I'm not sure what the court's plan is for scheduling, but I  
11 do have an overnight officer. I was going to call him last,  
12 but I'm going to get him on, so hopefully he can go home and  
13 sleep. So the officer -- we'll be calling Officer Miguel  
14 Martinez. And this involves the September 15th incident.

15 THE COURT: Okay. While your agent is getting  
16 Officer Martinez, it looks like we will be going into the  
17 afternoon. So I expect probably after mister -- or excuse  
18 me -- Officer Martinez testifies, we will take a recess for  
19 a short period of time for a number of reasons, including  
20 biological and to allow people to eat.

21 MR. WESLEY: Your Honor, may I excuse the other  
22 witness and tell him to come back at a certain time?

23 THE COURT: Sure. How long do you think Officer  
24 Martinez's testimony will take?

25 MR. WESLEY: I'm hoping that I will have him on

1 and off the stand in 20 minutes. That's for my questioning.

2 THE COURT: Okay. And then I expect there will be  
3 some cross-examination. So why don't you tell them to come  
4 back at 1:15? Thank you.

5 MR. WESLEY: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Okay. Officer Martinez, if you want to come  
8 through and then walk around behind that big rectangular  
9 block, and then you can come on up to the witness stand that  
10 way. And I'm going to put you -- I'll swear you in first.  
11 If you can raise your right hand, please.

12 MIGUEL MARTINEZ,

13 called on behalf of the government, was duly sworn, was  
14 examined and testified as follows:

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. Thank you. And you may sit  
17 down. Officer Martinez, witnesses are permitted to remove  
18 their masks, if they want to, when they're testifying.

19 THE WITNESS: All right.

20 THE COURT: And then I will let Mr. Wesley proceed  
21 with his examination.

22 MR. WESLEY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. WESLEY:

25 Q. Officer Martinez, could you please tell the court how

1 long you've worked for the Minneapolis Police Department?

2 A. Yes, sir. I start as a CSO, so I start in 2016, and I  
3 was a CSO for about two years.

4 THE COURT: Okay. Let me stop you. First of all,  
5 let's get his full name on the record.

6 And then, Officer Martinez, if you can talk a  
7 little bit slower and talk into the mic so that our court  
8 reporter can hear you.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 BY MR. WESLEY:

12 Q. Officer Martinez, could you please state your full name  
13 for the record?

14 A. Yes, sir. First name Miguel. My middle name Andres.  
15 And then last name Martinez Suarez.

16 MR. WESLEY: Any spelling necessary?

17 COURT REPORTER: Could you say your last name  
18 again? Martinez Juarez?

19 THE WITNESS: Suarez.

20 COURT REPORTER: Could you spell that, please?

21 THE WITNESS: Yes, ma'am. S-U-A-R-E-Z.

22 COURT REPORTER: Thank you.

23 BY MR. WESLEY:

24 Q. Officer Martinez, have you testified more than once in a  
25 court before?

1 A. Yes, sir.

2 Q. You have more than once?

3 A. Oh, no. Just one. Yeah, just one.

4 Q. Well, I'll just advise you that it's very important to  
5 speak loudly, clearly, and slowly, so everybody can  
6 understand you. And I'm an offender of this a lot. I'm  
7 sure the court reporter can tell you. But it's important to  
8 make sure that everyone can hear you over the microphone.

9 Okay?

10 A. Yes, sir.

11 Q. So please tell the court how long you have been working  
12 as a Minneapolis police officer.

13 A. I've been with the police office for four years right  
14 now.

15 Q. So roughly did you say 2016, 2017?

16 A. As an officer, '18, so yeah.

17 Q. So 2000 -- when did you start? What year?

18 A. As an officer, 2018.

19 Q. So you started as an officer in 2018?

20 A. Mm-hmm.

21 Q. And is it fair to say that you've mostly worked  
22 overnight shifts?

23 A. For the most part, yes.

24 Q. Is it fair to say that you worked overnight last night?

25 A. Yes, I did.



1 Q. You've been awake for a long period of time at this  
2 point?

3 A. I have.

4 Q. All right. So let me know if you need clarification to  
5 any of my questions. But we are here to talk about an  
6 incident that occurred on September 15th of 2020, right?

7 A. Yes, sir.

8 Q. And could you tell the court the general nature of the  
9 call that you were responding to on that date?

10 A. Yes, sir. Initially we were going to an accident PD.  
11 That was the initial call, so --

12 Q. And when you say "PD," do you mean property damage?

13 A. Correct.

14 Q. And when you were responding to this call, did you have  
15 any information about the whereabouts of the driver or  
16 occupants that were in the crash?

17 A. Per the remarks in the call that night, it says that the  
18 person -- I mean, there was about three occupants and they  
19 have left the scene. So by the time, you know, like we were  
20 going there, we thought they were gone from the scene.

21 Q. So you were expecting to respond to a scene where there  
22 were two vehicles crashed into each other and no one was  
23 going to be there?

24 A. Correct.

25 Q. And the other vehicle that was crashed into, was that a

1 parked, unoccupied vehicle?

2 A. Yeah, I believe so. Yes.

3 Q. And because, for the court, this occurred shortly after  
4 3 a.m.; is that right?

5 A. Yes.

6 Q. So you get on scene. Were any of the three -- the three  
7 reported occupants of the vehicle at the scene right when  
8 you got there?

9 A. Yes sir. When we arrived, there were two males by the  
10 vehicle and there was a third one leaving the scene.

11 Q. And could you please describe for the court who you  
12 interacted with first?

13 A. As soon as I got out of my squad car, I saw two males by  
14 the crash, the two vehicles crashed, kind of arguing. And  
15 then my partner stay with those two. And then I saw the  
16 third male, you know, turning around the corner, so I just  
17 went and grabbed him.

18 Q. And what was this other person doing as you turned the  
19 corner and saw them? What did they say they were doing  
20 actually?

21 A. Well, he -- he was saying that he was urinating, so --

22 Q. And to be clear, this third individual was not the  
23 defendant Mr. Elmi? It was one of the other occupants?

24 A. It was a different person, yes.

25 Q. So you grabbed this person who said he was urinating.

1 And he was by some bushes, right?

2 A. Correct.

3 Q. And what did you do with him?

4 A. I told him to stop doing that and come back to the scene  
5 so we can talk, I mean, just bring him back to the scene, so  
6 I can help out my partner.

7 Q. How would you describe this person's demeanor that you  
8 were dealing with?

9 A. The one I grab from the corner?

10 Q. Yes, that individual.

11 A. Yep. For the most part he was, you know, compliant, for  
12 the most part. I mean, I was just trying to make sure he  
13 was okay, since he probably was related to the PD. So he  
14 was compliant.

15 Q. Did he -- did he tell you that he was involved in the  
16 crash?

17 A. Yep. As we were walking back to the, you know, where  
18 the vehicles were, he was saying that he was inside the  
19 vehicle with two more people and then that one of the people  
20 was the owner of the vehicle.

21 Q. Did he tell you who was driving the vehicle?

22 A. He state -- he didn't tell me, but he said that there  
23 was a male that didn't have a shirt at the moment, when I  
24 was coming back, that was the owner. He didn't specify who  
25 was -- who was the driver, though.

1 Q. And so just to be clear, as you're investigating a car  
2 crash where there's property damage crashing into a parked  
3 car, do you want to know who the driver is?

4 A. If we can get that from the people on scene, yes.

5 Q. So this is all captured on your body camera, right?

6 A. Yes, it was.

7 Q. And you had the opportunity to review your body camera  
8 yesterday and then I assume on your own time; is that right?

9 A. Yes.

10 Q. And is it a fair and accurate copy of what you heard and  
11 observed in your response to this car crash around 3 a.m. on  
12 September 15th, 2020?

13 A. Yes.

14 MR. WESLEY: Your Honor, I would offer that. It's  
15 the BWC marked 15 on the disk.

16 THE COURT: So Exhibit 15?

17 MR. WESLEY: Exhibit 15, Your Honor, yes.

18 THE COURT: All right. Mr. Kushner, any  
19 objection?

20 MR. KUSHNER: No objection.

21 THE COURT: Okay. Exhibit 15 is admitted for the  
22 purposes of the pending motions.

23 BY MR. WESLEY:

24 Q. Did you end up speaking with an individual, again, not  
25 the defendant, but one of the other three persons that were

1 in the car, who was seated in the backseat of your squad?

2 A. So once I got back to the crash site, like I said, there  
3 was two -- two males that were kind of arguing. So I ended  
4 up just grabbing one of those, and I was trying to just, you  
5 know, kind of deescalate the situation at the moment. So I  
6 took one of the males back to my squad.

7 Q. And maybe we should -- maybe we should get some names  
8 here. So one of the persons you dealt with was Fowzi Elmi;  
9 is that right?

10 A. Correct.

11 Q. Was Mr. Elmi one of the persons that was arguing that  
12 you had to separate them to deescalate the situation?

13 A. Yes, he was.

14 Q. And so the other person was the one you brought back to  
15 the squad car, right?

16 A. Correct.

17 Q. And when you spoke with this person, could you describe  
18 for the court just in general what their demeanor was and  
19 what was being discussed?

20 A. The male was really frustrated. He was kind of in  
21 between crying and complaining about his vehicle being  
22 damaged. One of the reasons why I took him back was because  
23 he was the one that looked to me that was in more distress  
24 at the moment. So one of the things I was trying to do was  
25 to get him to calm down to understand what actually

1 happened, so --

2 Q. And this disturbance that was occurring between Mr. Elmi  
3 and this individual, that was happening right in the middle  
4 of the street; is that --

5 A. Correct.

6 Q. Did anyone else --

7 MR. KUSHNER: You didn't even let the witness  
8 answer. I mean, are you going to just completely testify  
9 for the witness?

10 THE COURT: Is that an objection?

11 MR. KUSHNER: Yes.

12 THE COURT: And what's the objection?

13 MR. KUSHNER: That the witness -- that the  
14 prosecutor is testifying and didn't wait for the witness to  
15 answer the question.

16 THE COURT: I will overrule that objection.

17 Mr. Wesley, if you do want to slow down a little  
18 bit with the questions, just to make sure we're getting the  
19 full answer.

20 MR. WESLEY: Yes, Your Honor. And my apologies.  
21 I thought I heard a "yes" before I continued.

22 BY MR. WESLEY:

23 Q. But to reask the question, Officer Martinez, the  
24 disturbance that was occurring between Mr. Elmi and the  
25 person you brought back to your vehicle to deescalate the

1 situation, as you said, that disturbance was occurring in  
2 the middle of the street? Is that correct or is that not  
3 correct?

4 A. That is correct.

5 Q. Did any other individuals end up coming outside while  
6 this was going on that was not one of the three persons  
7 involved in the crash?

8 A. Yeah. In the meantime, while I was dealing with the  
9 three people that, I mean, we figure was involved with the  
10 crash, the owner of the parked vehicle actually came out,  
11 you know, from his residence to talk to us to, you know, get  
12 information I'm guessing for his insurance or whatever. So,  
13 yeah, there was a fourth person at this time.

14 Q. So going back to talking with the individual who was  
15 going back and forth between, you know, being upset and  
16 crying, that person acknowledged that it was their vehicle;  
17 is that right?

18 A. Yes. Yes, he did.

19 Q. Did that person say that they were driving?

20 A. No, he did not admit he was driving. At the moment he  
21 didn't, no.

22 Q. Let's just jump to it. At some point did you end up  
23 going to the vehicle that was crashed that was occupied by  
24 these three individuals at one point?

25 A. Like I say, he was in a lot of distress, so he didn't

1 actually calm down, you know, completely. So I offer, you  
2 know, like I need your information, this is a crash, right,  
3 so do you have an ID on him. He didn't. So I didn't want,  
4 you know, these two people to start fighting again or, you  
5 know, cause a scene, I offer to go back to the vehicle,  
6 retrieve his ID and retrieve his insurance information for  
7 the crash.

8 Q. And did you leave this person uncuffed with the door  
9 open sitting with his legs out in the backseat of the squad?

10 A. I did. He was kind of, you know, freaking out already.  
11 So at the moment there was no need for me to do anything  
12 else. I ask him, you know, stay in the squad, I'll go get  
13 the stuff, we'll get all this sorted out, and then you will  
14 be on your way.

15 Q. Can you tell the court what happened when you went back  
16 to the vehicle looking for the driver's license and  
17 insurance?

18 A. Yeah. So I open the driver door, because he close it,  
19 and then I was just kind of, you know, like looking in the  
20 places which more people, you know, will have stuff,  
21 personal stuff, you know. Open the door; there was nothing  
22 there. I was looking for his ID and his insurance, so  
23 usually they're, you know, in the center console, left  
24 compartment. Right? So I shine my light real quick; and  
25 then as soon as I shine my light, there was, you know, like



1 the opening, the car had like an open area in the middle, I  
2 shine it quick, I glance over, and then I realized it was a  
3 handgun in plain sight, so --

4 Q. And at the time when you saw it, did you believe it to  
5 be a handgun, an actual firearm, or something else?

6 A. At the moment I have no clue what it was. It looked to  
7 me like it was a firearm, like a real one.

8 Q. And at the moment that you saw a firearm, given the  
9 circumstances of the situation that's captured on your  
10 body-worn camera and you've been testifying about, what did  
11 you do upon seeing that weapon?

12 A. Well, once I realized there was a handgun, I mean, I  
13 thought it was a real handgun, I told my partner, hey, you  
14 know, we need to cuff everybody up, just, you know, to get  
15 officer safety. I mean, nobody was in cuffs at this point.  
16 So my partner was dealing with two people. I have a third  
17 person in my squad. So we handcuff everybody.

18 Q. And in particular did you end up handcuffing and dealing  
19 with Mr. Elmi, the defendant?

20 A. I did end up dealing with the defendant, yes.

21 Q. And did you end up searching him?

22 A. I did.

23 Q. And is that captured on your body camera?

24 A. Yes, it was.

25 Q. In your mind, what was your purpose for searching him at

1 that moment in time?

2 A. I didn't have the time to confirm it was a real, you  
3 know, a firearm, but in my mind at the moment it was. So at  
4 this moment everybody was under arrest for a possible  
5 firearm, so incident to arrest he was searched.

6 Q. And is it your understanding under Minnesota law that  
7 having a firearm where you found it is a crime?

8 MR. KUSHNER: Objection and leading.

9 THE COURT: Overruled.

10 THE WITNESS: For me at the moment it was the  
11 thing that technically a crime was committed at the moment.  
12 They leave the scene of a crash site. Right? So at the  
13 moment I thought, yes, it was a crime.

14 BY MR. WESLEY:

15 Q. And with regard to the specific location where the  
16 firearm was found, where you saw it, where did you see it?

17 A. It was in, like I say, it was in the middle, in the  
18 center area, which is accessible for everybody in the  
19 vehicle, so --

20 Q. Is that why you ordered all three of them to be put  
21 under arrest?

22 A. Correct.

23 Q. Yesterday did you review a photograph that was taken of  
24 the firearm where it was found before it was moved?

25 A. Yes. Yeah, I took a picture of that area.

1 Q. And that was a fair and accurate picture of where you  
2 found the weapon before you actually took it into police  
3 custody; is that right?

4 A. That's correct.

5 MR. WESLEY: Your Honor, that has been marked as  
6 Exhibit No. 16, and the government offers Exhibit No. 16  
7 into evidence.

8 THE COURT: Any objection, Mr. Kushner?

9 MR. KUSHNER: No, no objection.

10 THE COURT: Okay. Thank you.

11 Exhibit 16 is admitted for purposes of the hearing  
12 and the motions.

13 BY MR. WESLEY:

14 Q. As you were searching Mr. Elmi, did you find anything  
15 concerning on his person?

16 A. Yes. After I finish emptying all his pockets, there was  
17 I believe to be two bags of at the moment just narcotics  
18 that would, you know, use as evidence, so --

19 Q. And in your mind -- well, what did you do based on  
20 finding narcotics on Mr. Elmi?

21 A. Well, at the point, besides the firearm at the time, he  
22 was, you know, he was under arrest for narcotics as well.

23 Q. So at some point after the individuals had been searched  
24 by you and other officers, did you or your fellow officers  
25 have the opportunity to go back to the car and further

1 examine the weapon that was found in the center console?

2 A. Yes. After -- after the three of them were, you know,  
3 properly secured, handcuffed and searched, and then I went  
4 back to, you know, like photograph where the firearm was  
5 located at and then I, I mean, what I usually do is make  
6 sure that, Is it loaded, Is not loaded. So when I was  
7 trying to check if there was a round in the chamber, then I  
8 realized it was an actual BB gun.

9 Q. So essentially for the court's information, when you  
10 check to see if a gun is loaded or not, what's the mechanics  
11 of what you do?

12 A. What I -- what I usually do is, first of all, remove the  
13 magazine to make sure I don't drag another round into the  
14 chamber. And there was no magazine. So after removing the  
15 magazine, I will just drag the gun, the firearm, and then  
16 make sure, you know, did the round eject or not and then the  
17 chamber is clear.

18 Q. So at the point you tried to eject the magazine,  
19 realized there wasn't a magazine, you started to realize  
20 that it wasn't a firearm; is that right?

21 A. Correct.

22 Q. And the weapon actually turned out to be a BB gun; is  
23 that correct?

24 A. Yes.

25 Q. Now, based on your understanding of Minnesota law, is it

1 a crime to carry a BB gun in a car where it's not cased and  
2 unloaded?

3 A. Yes, sir.

4 Q. So could you tell the court what happened -- ultimately  
5 happened to all three of the individuals as a result of this  
6 crash, your investigation in the street and finding this BB  
7 gun?

8 A. Well, like after we sorted everything out, we -- I  
9 talked to my supervisors, and everything was done for, you  
10 know, the possession of the BB gun for the three of them,  
11 since it was accessible for everybody in the vehicle, and  
12 then for the defendant we did PC narcotics.

13 Q. But for all three of them it was probable cause for the  
14 possession of the BB gun?

15 A. Correct.

16 Q. And then for Mr. Elmi it was the BB gun and the drugs?

17 A. That's correct.

18 Q. When you initially -- going back to when you initially  
19 arrive on the scene and you are expecting no one to be there  
20 based on the caller's report, can you tell the court when  
21 you parked were the three individuals already in the area or  
22 did they arrive back after you parked?

23 A. Well, like I say, in the beginning per the remarks of  
24 the call, it stated they were gone. So I was assuming as I  
25 was arriving that they will be gone. But then when we got

1 closer to the scene and I see all kinds of vehicles, then I  
2 saw the people in the vicinity of the incident.

3 Q. And based on your training and experience, what is a  
4 driver supposed to do when they strike a vehicle that's  
5 unoccupied on the street?

6 A. Well, if it all unoccupied -- well, at least call 911 to  
7 call in a report. And then me as an officer will try to  
8 contact the second person for the parked vehicle. So at the  
9 bare minimum call 911 to report that they crash.

10 Q. And was your 911 call from the occupants of the three  
11 vehicle or was it from the owner of the parked car that was  
12 crashed into?

13 A. No. It was from -- I believe it was the owner of the  
14 parked vehicle. Sorry.

15 Q. Is the driver of the vehicle supposed to leave the scene  
16 when they crash into a parked vehicle that's unoccupied?

17 A. No, they're not supposed to leave the scene.

18 Q. In looking back at your body-worn camera and your  
19 recollection of what was going on in the middle of the  
20 street, could you describe for the court the behavior of  
21 Mr. Elmi and the other individual? Be more specific about  
22 what they were doing when you say there was an altercation  
23 between the two.

24 A. It was really unclear in the beginning why were they so  
25 upset. I mean, it was a crash. Right? So, I mean,

everybody is going to be, especially the owner, will be upset of crashing. But then after, you know, like we dealt with them on the situation and start, you know, turning to something different, the alleged owner of the vehicle, he was super -- you know, like he was really distressed about it. He was frustrated, and he was crying. And then the defendant, he was somewhat somehow compliant, although until I handcuff, and then he start, you know, like becoming more defensive and then --

Q. I'm going to interrupt you. I'm asking specifically about when Mr. Elmi was with the other individual in the street and then you made the decision that they needed to be separated. Right?

A. Oh.

Q. So before they were separated, what exactly were the two of them doing that made you think, geez, I got to separate these guys?

A. They were pretty much, kind of, like pushing each other and then being in each other's face. So I didn't want that to escalate to a fistfight or a tussle, where I have to actually, you know, use force and my partner has to use force.

Q. But they were physically pushing one another?

A. Correct.

Q. And based on your training and experience, is that a

1 violation of Minnesota law?

2 A. Yes.

3 Q. And what violation would that be if you decide to cite  
4 somebody for that?

5 A. Assault. Depending on how bad it could be, different  
6 degrees of assault.

7 Q. And is there fighting under disorderly conduct as well?  
8 Are you familiar with that or no?

9 A. Yeah.

10 MR. KUSHNER: Objection. Leading.

11 THE COURT: Sustained.

12 MR. WESLEY: I'm asking if he's familiar with it  
13 or not, Your Honor.

14 THE COURT: It's still sustained.

15 BY MR. WESLEY:

16 Q. But assault is what you described?

17 A. Correct.

18 Q. When they shoved one another and you had the opportunity  
19 to see Mr. Elmi and the other individual, did you note any  
20 physical injuries to their persons?

21 A. The person I dealt with, the alleged owner of the  
22 vehicle, he -- I believe he was like a bloody nose or  
23 something or he has some scratches on his arm.

24 Q. And, in any event, all the -- the interactions at least  
25 from the perspective of your body-worn camera was captured



1 in Exhibit 15; is that right?

2 A. Correct.

3 Q. Thank you, Officer Martinez. I don't have any further  
4 questions for you at this time.

5 THE COURT: Okay. Mr. Kushner, do you have  
6 cross-examination?

7 MR. KUSHNER: Yes, I do. Judge, before we get  
8 going, can I take a break for a few minutes?

9 THE COURT: Why don't -- this is for personal  
10 reasons, I assume?

11 MR. KUSHNER: Hmm?

12 THE COURT: Do you need to look at your notes,  
13 or is it for personal reasons?

14 MR. KUSHNER: Relieve myself.

15 THE COURT: Yep, understood.

16 Okay. Why don't we take a 5-minute recess for  
17 everyone.

18 And I will remind the witness that he will  
19 obviously remain under oath when we come back.

20 MR. KUSHNER: Thank you.

21 THE COURT: We're in recess.

22 THE CLERK: All rise.

23 (Recess taken at 1 p.m. until 1:10 p.m.)

24 THE COURT: We are back on the record in United  
25 States versus Elmi, Case No. 20-cr-262 (ADM/ECW).

Officer Martinez, as I said, you are still under oath.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. Mr. Kushner, I'm happy to have you proceed now.

MR. KUSHNER: Yes. Thank you, judge.

CROSS-EXAMINATION

BY MR. KUSHNER:

Q. Good afternoon, Officer Martinez. My name is Jordan Kushner. I'm the attorney for Fowzi Elmi.

A. How are you doing, sir?

Q. Pretty good. Did you prepare a report about this incident shortly after it happened?

A. I did, sir.

Q. And is that common practice, if you make an arrest, to do a narrative report to explain what happened?

A. Usually by the end of your shift, yes.

Q. And then the narrative report would include all the important information or relevant information about the incident?

A. It should, yes, sir.

Q. And does that -- did you prepare the report shortly after it happened?

A. It's fair to say, sir, yeah.

Q. Like within an hour or two?

1 A. Yeah, I would say little more, because it took us a  
2 while to take care of the scene, but, like I said, before my  
3 shift ended that day, yes.

4 Q. And you would have put the, you know, put any pertinent  
5 details in there?

6 A. Correct.

7 Q. And -- and then, you know, it's an arrest report, right?

8 A. Correct.

9 Q. And so you have to -- if you make an arrest, you have to  
10 explain the reasons why you arrested a person.

11 A. Correct.

12 Q. And it would -- and so it would include information  
13 about any criminal offense that you believe you observed.

14 A. Correct.

15 Q. Did you have a chance to review your report before you  
16 testified?

17 A. I did.

18 Q. And your report didn't mention anything about anyone  
19 shoving each other, did it?

20 A. I don't recall, sir.

21 Q. Do you have the report with you?

22 A. Not with me, no.

23 MR. KUSHNER: Do you have a paper copy of the  
24 report? Thank you. Thank you.

25

1 BY MR. KUSHNER:

2 Q. If I showed you the report, would it help refresh your  
3 recollection?

4 A. It will.

5 MR. KUSHNER: Could I approach the witness?

6 THE COURT: Yes, you may.

7 BY MR. KUSHNER:

8 Q. And showing you a copy of a report that the prosecution  
9 has graciously provided to me, is that -- is that a copy --  
10 an accurate copy of the report you prepared?

11 A. It is, sir.

12 Q. Okay. And can you tell me if it refreshes your  
13 recollection as to whether you put in the report that you  
14 saw Mr. Elmi and anyone else shoving each other?

15 A. It does mention the part where they were inside my  
16 squad.

17 Q. Okay. But does it mention anything about them shoving  
18 each other before you placed them under arrest?

19 A. No, it does not.

20 Q. Okay. So you did not -- actually, all it says is  
21 that -- it says Ahmed was agitated and verbally fighting  
22 with Elmi; is that correct?

23 A. Correct.

24 Q. It doesn't mention anything about him making any kind of  
25 physical contact with Elmi.

1 A. Not in the reports, sir, no.

2 Q. And it doesn't say anything about Elmi fighting with  
3 Ahmed in any way.

4 A. Verbally fighting in the report. That's what I said.

5 Q. Well, it doesn't say that Elmi was verbally fighting.  
6 It says Ahmed was verbally fighting with Elmi. It doesn't  
7 say what Elmi was doing, does it?

8 A. It does not.

9 Q. Okay. And it definitely doesn't say that Elmi was  
10 shoving anyone or making any kind of physical contact with  
11 Ahmed or anyone else.

12 A. No, it does not.

13 Q. That's because there actually wasn't any kind of shoving  
14 that was happening.

15 A. I wouldn't say so. It was just not included in the  
16 report.

17 Q. So when you -- let's go back to when you arrived at the  
18 scene. So the -- so everyone associated with the vehicle  
19 was in the vicinity of the area; is that right?

20 A. Correct. Like I said before, there was two by the  
21 vehicles and there was one person around the corner from the  
22 scene.

23 Q. And one of the people by the vehicle was Mr. Elmi.

24 A. Correct.

25 Q. Okay. So he didn't -- he didn't leave the scene.

1 A. Per the remarks in the call, actually he did, but when I  
2 arrived, I mean, they were in the area, so --

3 Q. When you arrived, he was at the scene of the accident.

4 A. I would say so, yes.

5 Q. So he hadn't left the scene of the accident.

6 A. I -- you can say so, yeah, I guess.

7 Q. Based on your observations, he was still -- when you  
8 arrived, he was at the scene of the accident.

9 A. You can say so, yes.

10 Q. And so if he was at the scene, then he -- he wouldn't  
11 be -- he wouldn't have committed an offense of leaving the  
12 scene of an accident.

13 A. You can say so, yes.

14 Q. You know, and you said that you went to grab someone who  
15 was -- who was kind of nearby in the bushes, right?

16 A. That the person that was leaving the scene, yes.

17 Q. Okay. But -- but when you say "leaving the scene," it  
18 sounds like he was still in the vicinity.

19 A. Like the local way, yes.

20 Q. And so you said he told you he was urinating and you  
21 grabbed him?

22 A. Yeah, that's what he said. That's the reason why he was  
23 walking away from me, yes.

24 Q. So did you grab him while he was urinating?

25 A. Nope. I just told him to come back to me, and then we

1 walked together back to the scene.

2 Q. Sure. And so you're at the scene here. Do you know  
3 what Mr. Elmi's association with that vehicle was?

4 A. Like I say, I mean, I -- it's for us to assume that they  
5 were all in the vehicle because they were all together and  
6 they seemed to know each other at the time.

7 Q. So how do you know they were all in the vehicle?

8 A. Did I know?

9 Q. Yeah.

10 A. Oh, I mean, like I said, the remarks say one thing and I  
11 found people by the vehicle. I mean, it's hard to say,  
12 so --

13 Q. All right.

14 A. At the moment I assumed they were, yeah.

15 Q. So they hadn't told you, but it was your assumption,  
16 right, that they were in the vehicle together?

17 A. Yeah, it's fair to say that. I mean, usually when  
18 somebody crashes, they stay by the area, so yeah.

19 Q. Did someone identify themselves as the owner of the  
20 vehicle?

21 A. Yeah. The person I took back to my squad, he later say  
22 that it was his vehicle. And the person that I brought back  
23 to the scene mentioned that the vehicle belonged to the  
24 person without the shirt, which was that person, yes.

25 Q. And that was Ahmed?

1 A. Correct. Yes.

2 Q. And do you know where Mr. Elmi, if mister -- well, you  
3 said you -- you didn't know that Mr. Elmi was in that  
4 vehicle, but because he was with the people it was your  
5 assumption that he had been in the vehicle too.

6 A. You know, throughout the whole incident, they all start  
7 saying that they were in the vehicle. The driver say that  
8 they were all in the vehicle. Then the person I brought  
9 back to the scene said they were in the vehicle. So, you  
10 know, throughout the interaction they say that, yes.

11 Q. And who did you identify as the driver?

12 A. It was really confusing. So I, like I said, you know,  
13 based on my experience, I would think that the owner would  
14 be driving. Well, he say that, you know, somebody else was  
15 driving. I mean, he mention it, so --

16 Q. So you don't know who the driver was?

17 A. A hundred percent, no, I did not.

18 Q. All right. You kind of -- you guessed that the owner  
19 was the driver, but you don't actually know for a fact.

20 A. No, I didn't guess he was the driver. Like I say, it  
21 was an accident. So I was more concerned about, you know,  
22 getting information for the report. I have the owner of the  
23 crashed vehicle too on scene, so --

24 Q. Sure. I understand. And so I'm just trying to clarify  
25 what information you had. That's all.



1 A. Right.

2 Q. And so it sounds like you didn't -- you didn't have  
3 information about who was actually driving the vehicle.

4 A. Like I say, a hundred percent, no.

5 Q. Okay. Did you identify Ahmed -- were you able to  
6 confirm that Ahmed was the owner of the vehicle?

7 A. After I grabbed the information, yes.

8 Q. After you grabbed the information from the car?

9 A. Yeah. Well, I run the plate, and then I run his  
10 information, yes.

11 Q. Okay. Was that before or after you arrested them?

12 A. That I got the information?

13 Q. Yes.

14 A. Probably after. I went back to my computer, so it was  
15 probably after, yes.

16 Q. So you would normally run the -- you would have run the  
17 computer to confirm who the driver was after you -- after  
18 you did --

19 A. Not the driver. The owner of the vehicle, yes.

20 Q. Thank you for clarifying. And so -- and so as for  
21 Mr. Elmi, you kind of assume that he was in the vehicle,  
22 right, but you didn't know for certain?

23 A. I -- I knew after I talked to Ahmed, because we went  
24 back to the squad and we spend fair amount of time talking.  
25 Like I say, he was in distress, he was crying, so he was

1 really hard to understand, it took a while, but then he  
2 said, yeah, we were all in the vehicle, we were kind of, you  
3 know, like, tussling and that's why we crash.

4 Q. Okay. And you didn't know where Mr. Elmi was positioned  
5 in the vehicle when he was in there.

6 A. I mean, I did not, but Ahmed mentioned that they were  
7 close by. So I'm guessing they were like next to each  
8 other, so probably front, so -- but, like I say, a hundred  
9 percent, no, I don't know where he was.

10 Q. You don't know if he was driving or in the front?

11 A. Correct. No. No idea.

12 THE COURT: So I'm going to stop you both because  
13 you are having -- you are talking over each other.

14 And for the benefit of the court reporter, Officer  
15 Martinez, if you can let Mr. Kushner finish his question and  
16 then answer.

17 And, Mr. Kushner, if you can let Officer Martinez  
18 finish his response.

19 THE WITNESS: All right.

20 THE COURT: So that we have a clean record. I  
21 know it's a difficult, but thank you both.

22 BY MR. KUSHNER:

23 Q. So you believe that Mr. Elmi was in the vehicle.

24 A. Yes.

25 Q. But you don't know if he was in the front or the back.

1 A. No, I don't.

2 Q. And you don't know if he was a driver or a passenger.

3 A. No, I do not.

4 Q. And so -- so it was your testimony that you asked Ahmed  
5 to get his identification information from the vehicle?

6 A. What do you mean by "testimony"?

7 Q. Well, when you answered Mr. Wesley's questions, did  
8 you --

9 A. Oh. Oh, yes. Like I said, he was in distress. So I  
10 offer, hey, you know, like you don't have your ID with you,  
11 can I go get it for you. Like I said, I didn't want them to  
12 get more contact than needed. I grabbed the insurance  
13 information as well.

14 Q. Did he give you any explicit permission to go into the  
15 vehicle?

16 A. Ahmed did, yes.

17 Q. And what was the nature of -- what did he say exactly?

18 A. I don't recall exactly. Like I say, I offer. He said,  
19 yes, you can get my ID from my vehicle.

20 Q. Did he -- did he sign any kind of consent? Did you have  
21 him sign any kind of consent form --

22 A. I did not.

23 Q. -- to look in his vehicle?

24 A. I did not.

25 Q. And, again, your police report did refer to this, you

1 know, conversation that you had during the sequence of  
2 events where you went and looked in the vehicle; is that  
3 right?

4 A. Correct.

5 Q. Okay. And in your police report you don't mention that  
6 Ahmed gave you permission to go into his -- into the  
7 vehicle.

8 A. I will have to check that report, Your Honor. I don't  
9 recall word by words, so --

10 Q. Do you want to check the report and tell me if it says  
11 anything specific -- mentions anything specific that Ahmed  
12 gave you permission to go into the vehicle?

13 A. It does not specify that I asked for the permission, but  
14 it mentions that I told him that I will get it for him.

15 Q. So the report says that -- you put in your report  
16 shortly after the incident that you -- that you told them to  
17 stay seated in the squad while you went back to the vehicle  
18 to look for his ID; is that right?

19 A. Correct.

20 Q. And so it doesn't say anything about asking him  
21 permission to go into the vehicle.

22 A. Not specifically, no.

23 Q. And that's because -- you know, what it indicates is  
24 that you had him sit there and went ahead and looked into  
25 the -- looked in the vehicle on your own.

1 A. No. For him.

2 Q. Okay. Well, it doesn't say anything in the police  
3 report that you did it for him.

4 A. Correct.

5 Q. All right. It just says that you went -- you went to  
6 the vehicle to look for his ID.

7 A. Correct.

8 Q. And that nothing in there giving any indication that you  
9 asked for permission or got permission.

10 A. It's not written in the report, no.

11 Q. And so -- so was the door open or closed when you went  
12 to the vehicle?

13 A. Which one?

14 Q. The -- the vehicle where -- that you went into that  
15 Ahmed was apparently driving.

16 A. Right. But which door was open? Which one?

17 Q. Were either of the doors open?

18 A. The passenger was open. The front passenger was open.  
19 The driver and everything else was closed.

20 Q. Okay. And so when you went to look in the vehicle, did  
21 you open the driver's door?

22 A. Correct.

23 Q. Okay. And then you said you shined your flashlight?

24 A. Correct.

25 Q. In the passenger area?

1 A. In the front, front of the vehicle area, yes.

2 Q. All right. And that was after you opened the door.

3 A. Correct.

4 Q. And it's your -- your testimony that you saw a handgun  
5 in the center console area.

6 A. Correct.

7 Q. The photograph, Exhibit 16, do you know -- did you take  
8 that photograph?

9 A. I will have to look at it. I mean, all the pictures  
10 were taken by me, yes.

11 Q. Okay. And were the pictures taken at the time or  
12 after -- after everyone had been arrested?

13 A. After it was -- everybody was handcuffed, yes.

14 Q. And so --

15 MR. KUSHNER: Do you happen to have a hard copy of  
16 Exhibit 16?

17 MR. WESLEY: I don't have a hard copy, but I can  
18 pull it up on my computer quick, if you want.

19 MR. KUSHNER: I mean, I have it too, but I can  
20 show it to -- I can pull it up too.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MR. KUSHNER:

24 Q. Okay. I'm showing you what's been admitted as  
25 Exhibit 16. Let me reduce it so you can see the whole

1 thing.

2 THE COURT: Are you able to link your computer to  
3 the system, so we can all see what the witness is looking  
4 at?

5 MR. KUSHNER: Probably. It might take a second,  
6 but I can -- should be able to.

7 MR. WESLEY: If mister -- Mr. Kushner, do you have  
8 the same -- do you have the same computer I do?

9 (Attorneys confer.)

10 THE COURT: All right. Mr. Wesley, you have a  
11 copy of Exhibit 16, correct?

12 MR. WESLEY: I do, Your Honor. This is a copy of  
13 the photo of the center console. I can pull it up on my  
14 computer, if Your Honor needs to see it.

15 THE COURT: I think it's on the flash drives that  
16 was provided, right?

17 MR. WESLEY: It's definitely on the flash drives.

18 THE COURT: All right. I've inserted the flash  
19 drive that has been provided by the government so that I can  
20 also see Exhibit No. 16, which I understand the government  
21 has a copy of, of course, because it's their exhibit.

22 And then, Mr. Kushner, you are proposing to take  
23 your laptop over to the witness and show that to him?

24 MR. KUSHNER: Yes.

25 THE COURT: Okay. Does the government have any

1 objection to that?

2 MR. WESLEY: No, Your Honor.

3 THE COURT: All right. Perhaps one of you, or if  
4 not both, want to be masked, if you are getting that close  
5 to talk.

6 THE WITNESS: I will --

7 MR. KUSHNER: I've been vaccinated, but --

8 THE COURT: I'm not seeing the exhibit on this.

9 MR. KUSHNER: It's No. 16.

10 THE COURT: Right. No. It's --

11 Mr. Wesley, I'm looking at it, and it looks like  
12 there is a McAfee removal file. Perhaps I'm in the wrong --

13 MR. WESLEY: This is the process that your clerks  
14 have to go through, Your Honor. There's some sort of --

15 THE COURT: An executable?

16 MR. WESLEY: Yeah. And I forget what the file  
17 name is, but you got to open a folder and then type in that  
18 password that's on the Post-it.

19 THE COURT: I'm not able to open it up with the  
20 password that you've given me, which is this (indicating),  
21 so --

22 MR. KUSHNER: Does anyone have the converter, so I  
23 can hook --

24 THE COURT: No, I think -- here's what we're going  
25 to do. We'll go ahead with the testimony.



1 And in fact I think, Mr. Wesley, that I may have  
2 locked the entire drive now because I entered the password  
3 three times.

4 MR. WESLEY: I can get you a --

5 THE COURT: Okay.

6 MR. KUSHNER: Did you remember the exclamation  
7 point at the end?

8 THE COURT: I did. Yes, I did.

9 MR. KUSHNER: It held me up the first two times.

10 THE COURT: Yeah. No, I didn't think it was there  
11 just because of excitement about the exhibits, so --

12 All right. So here's what we'll do. Mr. Kushner,  
13 why don't you go ahead and examine the witness with Exhibit  
14 No. 16, and you'll just have to keep in mind that I don't  
15 see what's being shown.

16 MR. KUSHNER: I can probably just go off the --

17 THE COURT: Sure.

18 MR. KUSHNER: I'm not going to ask him much  
19 questions, but just foundational. This is Exhibit 16.

20 THE COURT: All right. Thank you.

21 BY MR. KUSHNER:

22 Q. And so I'm showing you what's been marked as Exhibit 16.  
23 Do you recognize that photograph?

24 A. Yeah. Yes, sir.

25 Q. This is a photograph you identified to Mr. Wesley that

1       you took, and it's supposed to show where the gun was found.

2       A.   Correct.

3       Q.   And so you took that photograph.

4       A.   Correct.

5       Q.   And you took it after the arrest; is that right?

6       A.   Correct.

7       Q.   And so do you know if anyone handled the gun -- someone  
8       could have handled the gun between when you made the arrest,  
9       when you first found it and when you took the photograph?

10      A.   You mean another officer or --

11      Q.   Yes.

12      A.   No, nobody went inside the vehicle.

13      Q.   Now, you could have handled the gun during that time.

14      A.   No, I didn't. Before everybody was handcuffed and  
15      everything, I -- I, like I said, I saw the handgun, and then  
16      after that we dealt with the people outside first, and then  
17      I went back and dealt with the evidence, yeah.

18      Q.   And how long after the -- how long after you placed them  
19      under arrest did you take the photographs?

20      A.   I do not recall. I don't know.

21      Q.   Was it hours?

22               THE COURT:   Okay. Go ahead and answer the  
23      question.

24               THE WITNESS:   Probably not hours, no.

25               THE COURT:   And then, Mr. Kushner, I'm going to

1 ask you to back up, if you're done with the exhibit, and  
2 return to the podium.

3 MR. KUSHNER: I'm going to go over one other  
4 photograph.

5 THE COURT: Okay.

6 BY MR. KUSHNER:

7 Q. So you are not -- it was probably less than an hour, but  
8 could have been around an hour.

9 A. Hard to say. Like I said, I don't recall how long it  
10 took.

11 Q. In any event, it was after -- was it after mister --  
12 after the three people have already been taken into custody  
13 and removed from the scene?

14 A. What do you mean "removed from the scene"?

15 Q. Taken to jail.

16 A. No. Everybody was on site.

17 Q. And so you don't know how long after, though?

18 A. No.

19 Q. Okay. And I'm going to just show you another photo.

20 And then the prosecution's indicated they will  
21 stipulate to this. This is the photograph right before. So  
22 I'll have to produce another copy and give it to the court  
23 afterwards.

24 MR. WESLEY: Your Honor, just to make the record  
25 clear, there were a series of photographs taken by this

1 officer; and whichever ones Mr. Kushner wants to introduce  
2 of that series, I'll stipulate to.

3 THE COURT: Okay. Thank you, Mr. Wesley.

4 Then you may go ahead, Mr. Kushner.

5 MR. KUSHNER: Just -- this is identified as the  
6 prosecution's --

7 COURT REPORTER: Would you please start over and  
8 say that again?

9 MR. KUSHNER: Sure. The file name is  
10 photo\_2020-09-15\_033256\_4435. Did you get that?

11 COURT REPORTER: Yes.

12 BY MR. KUSHNER:

13 Q. Okay. So do you recognize this photograph?

14 A. Yes, sir.

15 Q. Okay. And is this also a photograph you took?

16 A. Yes, sir.

17 Q. Okay. And do you know if you -- is this photograph also  
18 supposed to show where the gun was found in the car?

19 A. Yes, sir.

20 Q. And do you know if you took this photograph before or  
21 after you took the photograph that's Exhibit 16?

22 A. Most likely was right after --

23 Q. Okay. And --

24 A. -- or before. I don't know which one was first.

25 Q. But for like -- was it in sequence or first one and then

1 the other?

2 A. Correct.

3 Q. And so this is like -- this shows like a larger -- is  
4 this like a larger or smaller view of where the gun was  
5 found?

6 A. Not to be exact, but I believe to be the passenger side  
7 view.

8 Q. So it was from another angle?

9 A. Correct.

10 Q. So the first photo was taken from what angle,  
11 Exhibit 16?

12 A. In the first one you showed me?

13 Q. Yes.

14 A. Probably from the front, if you will.

15 Q. "From the front" meaning the front of the car?

16 A. "From the front" meaning inside the vehicle there's the  
17 middle, and then I'm facing where the handle was at.

18 Q. So you're kind of facing directly -- you're looking  
19 directly at it then?

20 A. Correct.

21 Q. And the other one you took while you were positioned at  
22 the passenger side.

23 A. Like I say, I don't recall exactly, but I believe so,  
24 yes.

25 Q. And you don't know what a person in the backseat would

1 have seen.

2 A. Can you repeat that?

3 Q. You don't know what a person in the backseat would have  
4 seen.

5 A. I don't know what you mean by that.

6 Q. If someone was sitting in the back -- did you take any  
7 pictures of the gun from the backseat?

8 A. No.

9 Q. Do you know if it would have been visible from the  
10 backseat?

11 A. I assume so, yes.

12 Q. But you don't know that.

13 A. If it was me, yes. For another person, I don't know.

14 Q. How about from the backseat on the driver's side? Did  
15 you check to see if it was visible from the backseat on  
16 the --

17 A. I did not.

18 Q. Did you check to see if it was visible from the backseat  
19 on the passenger side?

20 A. I did not.

21 Q. And you informed the people at the scene that you found  
22 the gun shortly after you found it, right?

23 A. Yes, right away.

24 Q. And they informed you right away that -- someone  
25 informed you right away that it was a BB gun.

1 A. Right away? No. I thought it was a real gun at the  
2 time when I first saw it.

3 Q. Did someone state on the -- on the video that it was a  
4 BB gun?

5 A. Just the defendant did, yes.

6 Q. And it was correct it was a BB gun?

7 A. At the end, yes.

8 Q. And do you know what, if any, statute is violated by  
9 having a BB gun in the vehicle?

10 A. By memory, no, I don't.

11 Q. Do you know what statute is violated by having a handgun  
12 in the vehicle?

13 A. No, but I -- no.

14 Q. And it's your testimony you didn't try to secure the gun  
15 right away as soon as you found it?

16 A. No. I tried to secure the people first, yes.

17 Q. You left the -- you left the gun there, at least what  
18 you thought was a gun.

19 A. Correct.

20 Q. Now, you pat searched Mr. Elmi before you found the gun,  
21 right?

22 A. No. No. I did the person that I brought back to the  
23 scene.

24 Q. Okay. According to your police report, which you still  
25 have, it says that you told -- doesn't it say that you told

1 Elmi and Ahmed to stay and talk to your partner and then you  
2 went to the corner to get Adan and -- okay. Wait. Hold on.  
3 Did you ask Mr. Elmi what, if any, association he had with  
4 the gun before you placed him under arrest?

5 A. I did not.

6 Q. Did you ask him if he was aware that there was a gun?

7 A. I did not.

8 Q. And did you ask him -- and did you confirm that he was  
9 even in the car before you placed him under arrest?

10 A. No, but I -- by directly asking him, no.

11 Q. And you didn't ask him where he was seated in the car.

12 A. I did not.

13 Q. And you didn't ask anyone else where Mr. Elmi was seated  
14 in the car.

15 A. No.

16 Q. Are you -- are you familiar with -- do you have any  
17 training in assessing people under the influence of drugs or  
18 chemicals?

19 A. I have, yes.

20 Q. And did you have any -- did you have any assessment  
21 about if any of the people you encountered at the scene  
22 seemed to be under the influence?

23 A. A formal assessment like if I was performing a DUI, no;  
24 but I could tell that they were, I mean, they were not  
25 acting like a normal person would do.



1 Q. None of them were acting normal?

2 A. Like I say, I mean, based on my experience, I saw some  
3 indicators that they probably were maybe, you know,  
4 intoxicated by substances or alcohol, but at the moment I  
5 didn't do like a full, long DUI.

6 Q. But it was your impression that all of them seemed to be  
7 under the influence of some kind of substance or chemicals?

8 A. I wouldn't say all of them. I will say for sure at  
9 least Ahmed, because that was the one that I dealt the most  
10 in the beginning. I will say that for the other two my  
11 interaction with them was, I mean, pretty much after I  
12 handcuff them and, you know, so --

13 MR. KUSHNER: All right. I have no further  
14 questions.

15 THE COURT: All right. Thank you, Mr. Kushner.  
16 Mr. Wesley.

17 REDIRECT EXAMINATION

18 BY MR. WESLEY:

19 Q. I'll be fairly brief, Officer Martinez, because I don't  
20 want to confuse you as to what -- the sequence of events,  
21 and it's captured on your body-worn camera. But as you  
22 recall it as you sit here on the stand today, were you able  
23 to obtain information from the three individuals about who  
24 the driver was of the vehicle at the time of the crash?

25 A. No, most of the information came from the person I dealt

1 with, which was Ahmed, and then he state he -- he kind of  
2 imply and say -- like I say, it was hard to understand what  
3 he was saying because he was crying and everything, but  
4 he -- he say that possibly the defendant was the one  
5 driving.

6 Q. And then so he -- Mr. Ahmed is the owner, but he's  
7 saying that Mr. Elmi was the driver?

8 A. Correct.

9 Q. But, of course, that doesn't tell you who the driver  
10 actually was, right?

11 A. No. Everybody was so tied to vehicles, so no idea.

12 Q. But when you initially saw the gun, which you believed  
13 to be a real gun, firearm, and you put handcuffs on  
14 everybody, Mr. Elmi, the defendant, told you it was a BB  
15 gun; is that right?

16 A. Correct, he did.

17 Q. And did that imply anything to you, him telling you that  
18 what you found in the car was a BB gun?

19 A. At the moment it didn't make any difference to me. I  
20 was more concerned about my partner's officer safety. So at  
21 that moment I didn't have the luxury to actually confirm it  
22 until after the fact.

23 Q. So even though you had a person telling you that what  
24 you saw was a BB gun, what did you believe that item to be  
25 from what you physically saw of it in the car?

1 A. A real firearm.

2 Q. Now, Mr. Kushner asked you if you are aware of what the  
3 specific violation was for carrying a BB gun in a vehicle;  
4 is that right?

5 A. Correct.

6 Q. And did I ask you that same question yesterday?

7 A. Correct.

8 Q. Did you go on your phone and find the statute and show  
9 it to me?

10 A. Correct.

11 Q. Would it refresh your recollection if I were to show you  
12 the statute, at least for what you believed the violation  
13 was that all three of them got booked on that day?

14 A. It will, yes.

15 MR. WESLEY: Your Honor, may I approach the  
16 witness to show an exhibit?

17 THE COURT: You may.

18 BY MR. WESLEY:

19 Q. Officer Martinez, are you able to see my screen?

20 A. All right. Yes.

21 Q. And is this the statute that you showed me yesterday  
22 that you believed was the violation?

23 A. Correct.

24 MR. KUSHNER: Is that 7181?

25 MR. WESLEY: Yes. And for the record it's -- and

1 I've shown Mr. Kushner, but it's Minnesota Statute 624.7181.

2 BY MR. WESLEY:

3 Q. And to be clear, that's what you believed the violation  
4 to be, is that right, Officer Martinez?

5 A. Correct.

6 Q. And then I just want to clear up one more thing about  
7 this shoving in the street. Now, you've read your report,  
8 right, in preparation for testimony?

9 A. Correct.

10 Q. And you went and watched your body-worn camera in  
11 preparation for testimony; is that right?

12 A. Correct.

13 Q. Do you recall seeing that shoving anywhere in the report  
14 or on the body-worn camera?

15 A. On the video.

16 Q. So you recall seeing it in the video?

17 A. Correct.

18 Q. And as you sit here today from your own memory, do you  
19 recall Mr. Elmi shoving Mr. Ahmed?

20 A. Correct. Yes.

21 Q. Did you review any other body-worn cameras besides your  
22 own in preparation for testimony?

23 A. I did not.

24 Q. So you believe that this would be seen on your body-worn  
25 camera if -- if it was on there?

1 A. It will be on that and most likely also in the squad  
2 camera, so --

3 Q. And, in any event, your body camera captures what the  
4 body camera sees; is that right?

5 A. Correct.

6 MR. KUSHNER: Objection. Confusing.

7 THE COURT: Overruled.

8 BY MR. WESLEY:

9 Q. And despite this issue of whether the gun was real or  
10 not and when you realized it was a BB gun as opposed to a  
11 real gun, ultimately what were all three persons booked for?

12 A. That there be a gun in the vehicle, that was located in  
13 the vehicle.

14 Q. Do you believe that you had any other grounds to arrest  
15 these individuals based on what you saw and observed on that  
16 day?

17 A. Well, obviously the defendant was -- had the narcotics,  
18 so that was another one. At the moment I actually did not,  
19 just that.

20 Q. So that's what you were personally focused on, the BB  
21 gun?

22 A. I was, yes.

23 Q. Thank you, Officer Martinez. I don't have any further  
24 questions for you.

25 MR. KUSHNER: A couple of follow up here.

1 THE COURT: Okay. Mr. Kushner is going to have a  
2 short recross, based on the redirect.

3 RECROSS-EXAMINATION

4 BY MR. KUSHNER:

5 Q. So, Officer Martinez, did your report make any -- any  
6 notation that Ahmed claimed that Mr. Elmi was the driver of  
7 the vehicle?

8 A. No, sir.

9 Q. That's something you pointed out for the first time here  
10 in court today.

11 A. Like we were discussing previously, it was on the video.

12 Q. You think it's on the video where he identifies Mr. Elmi  
13 as the driver?

14 A. On my body-worn camera, yes.

15 Q. You didn't note it -- you didn't note it in your report  
16 at the time.

17 A. No, sir. I didn't think it was necessary.

18 Q. And in your police report did you cite the statute that  
19 you believe was violated.

20 A. Not a specific statute, no. The offense or the PC,  
21 yeah.

22 Q. So you -- you had what is called a probable cause  
23 statement. Is that in part of the document that you have?

24 A. Correct.

25 Q. And then you mention BB gun in the vehicle, right?

1 A. Correct.

2 Q. And you don't mention what statute or ordinance it  
3 violated, if any.

4 A. No, sir. That will be in the arrest form that we do on  
5 the computer.

6 Q. And do you have any form that cited the statutes?

7 A. The electronic form is the one that will have that.

8 Q. I'm sorry?

9 A. When we book them, the paperwork we do to bring people  
10 to jail, that's where all that information will be. I  
11 personally don't do that in my personal reports.

12 MR. KUSHNER: Okay. I have no further questions.

13 THE COURT: Okay. Officer Martinez, you may step  
14 down. Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: And for the counsel, in terms of a  
17 recess, we had taken a very short recess, but I had intended  
18 to let people eat something, if they needed to. Mr. Wesley.

19 MR. WESLEY: Your Honor, I suspect that the next  
20 witness will take as long as -- just as long as one of the  
21 other two. So I agree we should take a recess. I will -- I  
22 think he's available all afternoon, and I'll try to make  
23 sure that he comes back whenever the court wants to come  
24 back.

25 THE COURT: Okay. Thank you.

1           And, Mr. Kushner, I assume you would want a short  
2 recess as well for lunch or something.

3           MR. KUSHNER: I don't need it.

4           THE COURT: Okay.

5           MR. KUSHNER: I don't object either.

6           THE COURT: Okay. We're going to take a short  
7 recess then just to give everyone a break as well. We will  
8 reconvene at 2:10.

9           And, Mr. Wesley, if you want to check with your  
10 witnesses.

11          MR. WESLEY: I can do that right now, Your Honor.

12          THE COURT: All right. We'll stay here until we  
13 make sure that they can come back.

14                               (Short recess.)

15          MR. WESLEY: Sorry, Your Honor. I'm being told  
16 that there is some shooting incidents in North Minneapolis  
17 and in or near St. Paul. And he's here. I'm asking him to  
18 confirm with his supervisors that he doesn't have to go  
19 anywhere to track down any shooting suspects. He says he's  
20 checking right now.

21          THE COURT: Okay.

22          MR. KUSHNER: I guess there's always something  
23 happening nowadays.

24          THE COURT: We'll take a short recess until  
25 Mr. Wesley comes back in, and then I will come back out and



1 say if we're going to take a longer one or not.

2 We're in recess.

3 THE CLERK: All rise.

4 (Short recess.)

5 THE COURT: Please be seated.

6 All right. Mr. Wesley, we took a short recess  
7 just so we didn't all have to sit here, but I'm ready to  
8 hear from you. What's the situation with your witness?

9 MR. WESLEY: So the situation is apparently a lot  
10 of people have been called in. He is in communication with  
11 his immediate sergeant right now asking to remain here.

12 THE COURT: Okay.

13 MR. WESLEY: I told him, you know, if you  
14 literally have to run because like the guy's outside or  
15 something, I could request that you testify -- because we're  
16 getting a second hearing anyways for Oklahoma, so I could  
17 request that he testify at that hearing, but I think he's  
18 still --

19 Oh. He's good to stay? Okay.

20 He's good to stay.

21 THE COURT: Okay. Well, then, like I said, I had  
22 planned on taking a recess, and I think that is in order at  
23 this point to give everyone a break. So I'm still going to  
24 say 2:20, even though that has shortened our time frame. So  
25 we will recess until 2:20.

1 And, Mr. Wesley, if you can address the exhibits  
2 with my clerk as well, that would be appreciated.

3 MR. WESLEY: I will do that.

4 THE COURT: All right. We're in recess. Thank  
5 you.

6 (Recess taken at 1:54 p.m. until 2:27 p.m.)

7 THE COURT: All right. Please be seated.

8 We are back on the record in the matter of United  
9 States versus Elmi, Case No. 20-cr-262.

10 Mr. Wesley, is the government ready with its next  
11 witness?

12 MR. WESLEY: Yes, Your Honor. And we'd call  
13 Officer Nathan Sundberg.

14 THE COURT: Okay. Thank you.

15 Okay. Officer Sundberg, if you want to come up to  
16 the witness stand, and then I will swear you in.

17 NATHAN SUNDBERG,  
18 called on behalf of the government, was duly sworn, was  
19 examined and testified as follows:

20 THE WITNESS: I do.

21 THE COURT: Okay. Thank you. And if you'd like  
22 to sit down, I'll let Mr. Wesley get your name on the  
23 record. And witnesses are permitted to remove their masks,  
24 if they prefer, when testifying.

25 THE WITNESS: My full name is Nathan, N-A-T-H-A-N,

1 John, J-O-H-N, Sundberg, S-U-N-D-B-E-R-G.

2 DIRECT EXAMINATION

3 BY MR. WESLEY:

4 Q. Thank you, Officer Sundberg. Could you please tell the  
5 court how long you've worked for the Minneapolis Police  
6 Department?

7 A. I've been with the Minneapolis Police Department for  
8 seven years.

9 Q. And did you have prior law enforcement experience  
10 before?

11 A. I do. I worked for Hennepin County for over eight  
12 years.

13 Q. And that was as a deputy?

14 A. Correct.

15 Q. In your role with the Minneapolis Police Department,  
16 have you worked in any particular specialized units?

17 A. Yes. I'm currently assigned to the gun investigations  
18 unit.

19 Q. Prior to that, what unit did you work in?

20 A. The gang -- what was it called? Well, the gang unit.

21 Q. And is it fair to say that the gang unit was effectively  
22 consumed by the weapons unit?

23 A. Yes, sir.

24 Q. When you were working with the gang unit, did that  
25 include the time period back in June of 2019?

1 A. Yes, sir.

2 Q. And from your work with the gang unit, did you become  
3 familiar with two Somalia gangs in particular, the Somalia  
4 Outlaws and the 1627 Boys?

5 A. Yes.

6 Q. Could you describe for the court anything that was  
7 unique with those two particular gangs that caused law  
8 enforcement concern with regard to their criminal activity  
9 and behavior?

10 A. One thing in particular was a lot of fentanyl activity.

11 Q. And back during that time period, I mean, then and now,  
12 are there still a lot of overdose deaths resulting from the  
13 use of fentanyl?

14 A. Yes.

15 Q. Any other concerns that you can think of regarding  
16 particularly the Somalia gangs?

17 A. Well, not different from other gangs, but the use of  
18 firearms, carrying firearms involved in shootings.

19 Q. Are you familiar with a person by the name of Fowzi Elmi  
20 and specifically prior to the June 1st, 2019, stop?

21 A. Yes.

22 Q. And were you familiar with his brother Fahad Elmi?

23 A. Yes.

24 Q. And did you have any information that led you to believe  
25 they were members or associates of the 1627 Boys?

1 A. Yes.

2 Q. On June 1st of 2019 were you working?

3 A. I was.

4 Q. And that was part of the gang unit?

5 A. Correct.

6 Q. Did you and your unit, the officers that were working,  
7 receive information from Officer Christopher Dauble?

8 A. Yes, we did.

9 Q. Do you recall the general nature of what that  
10 information was and where it came from?

11 A. Officer Dauble had informed us early in our shift that  
12 he was aware that there was a vehicle that was in the area  
13 of the Second Precinct somewhere. He gave us some specifics  
14 about the vehicle. It was a 2018 Toyota RAV4, I believe  
15 dark in color, and he gave a specific plate. I believe it  
16 was boy, yellow, king 063. He said in that vehicle he had  
17 information that there were -- there was at least one  
18 weapon, one gun, and a large number of fentanyl pills.

19 Q. Do you recall any -- do you recall if the information  
20 was provided by a particular individual, not the name, but  
21 do you know where the information came from?

22 A. Yes. Yep. I was aware that Officer Dauble was in  
23 contact with someone.

24 Q. Was it a CRI?

25 A. Yes, it was.

1 Q. All right. So you received that information early in  
2 your shift. Did you go to the particular area where the CRI  
3 had described the vehicle would be?

4 A. Yes, we did.

5 Q. And who was the one who actually located the vehicle?

6 A. I was.

7 Q. And you found it, and you knew it by license plate and  
8 make and model?

9 A. Correct.

10 Q. Did you begin following it around?

11 A. We tried to make it obvious that we were trying to --  
12 not to make it obvious that we were looking for that  
13 vehicle. So when we located it -- when I located it in the  
14 area of 6th and Hennepin or 6th and University, my partner,  
15 who was driving, made a turn to go eastbound on University,  
16 just to kind of be in that area. And then we got on our  
17 radio and informed the rest of the guys that were working  
18 that we had located the vehicle.

19 Q. And once everyone was in place and able to make the  
20 stop, as safely as you can, is that what in fact happened?

21 A. Yes.

22 Q. Were there five occupants in the vehicle?

23 A. Yes, there were.

24 Q. Do you recall which occupant you dealt with at least  
25 initially?

1 A. Yes, I do.

2 Q. Who did you deal with?

3 A. I dealt with Mr. Fowzi Elmi.

4 Q. And was he in the front passenger seat of the vehicle?

5 MR. KUSHNER: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. WESLEY:

8 Q. Which seat of the vehicle was Mr. Fowzi on then?

9 A. He was in the front passenger seat.

10 Q. The nature of this particular stop, was it what's called  
11 a felony stop?

12 A. Correct.

13 Q. Can you describe --

14 MR. KUSHNER: Objection. Leading.

15 MR. WESLEY: Your Honor, these are --

16 THE COURT: It's overruled.

17 BY MR. WESLEY:

18 Q. Could you please describe for the court what a felony  
19 stop is and why it's conducted?

20 A. We have -- it can be conducted in slightly different  
21 ways, but the gist of the stop is having numbers. You want  
22 to have a number of police officers that are there  
23 approaching the vehicle with your firearms drawn, your duty  
24 weapons drawn, with knowledge that you believe that there  
25 are firearms in that car.

1 Q. And what's the purpose in the large amount of numbers  
2 and approaching with firearms, rather than just walking up  
3 and knocking on the window?

4 A. It's primarily safety.

5 Q. In dealing with Mr. Elmi, were you the one who searched  
6 him?

7 A. Yes, I was.

8 Q. Could you please describe for the court as  
9 systematically as you can how you searched him and what you  
10 found?

11 A. I recall I patted down his outer clothing. I recall  
12 locating a large amount of cash in his right -- in a right  
13 pant pocket. As I moved down his right leg, there was a  
14 large bulge that felt like pills, and I located a few  
15 baggies. I believe two bags of pills. When I went down the  
16 left-hand side, there were additional pills in his left  
17 sock.

18 Q. And this -- the method or the manner of the search that  
19 you -- that you were conducting, was it what you would call  
20 a full-blown probable cause arrest search or were you  
21 frisking merely for weapons?

22 A. Yes, merely for weapons.

23 Q. And as you were doing that, when you mentioned you came  
24 across a large amount of cash, could you tell what that  
25 object was?



1 A. It felt like a hard square. And certainly there are --  
2 would I bet my life on it? No, absolutely not. There could  
3 easily be a knife in there or even a very small -- I mean,  
4 there's small 6-shot .45 caliber guns that are the size of  
5 an iPhone 6.

6 Q. And so that was in the upper right front pocket?

7 A. Correct.

8 Q. And then moving on from there, you got to the ankles.

9 A. Correct.

10 Q. And as you were frisking for weapons, was it immediately  
11 apparent to you that they were pills?

12 A. Yes.

13 MR. KUSHNER: Objection. Leading.

14 THE COURT: Overruled.

15 BY MR. KUSHNER:

16 Q. So in total, from the two ankles, the right ankle and  
17 the left ankle, do you remember approximately how many pills  
18 you pulled off of Mr. Elmi's person at that point?

19 A. I believe there were three bags. I'm not sure of the  
20 exact count.

21 Q. Could you tell the court, based on finding a large  
22 amount of cash -- and I should -- do you recall how much  
23 cash it was in his pocket?

24 A. It was in excess of 1500, I believe.

25 Q. And after finding that large amount of cash and then the

1 three bags of pills in his ankles, what did you end up doing  
2 with Mr. Elmi at that point?

3 A. I had him take a seat in my squad, and I removed his  
4 shoes and socks.

5 Q. Why did you remove his shoes and socks?

6 A. To see if there were any more pills that were in his  
7 socks.

8 Q. Did you find any in his shoes and socks at that time?

9 A. I did not.

10 Q. Where did you put Mr. Elmi after removing his shoes and  
11 socks?

12 A. In the rear of my squad.

13 Q. Did you put his shoes and socks in there with him?

14 A. Yes, I did.

15 Q. Were you made aware at some other point in time that one  
16 of your fellow officers discovered something of note?

17 A. Yes, I did.

18 Q. And what did they discover?

19 A. Additional bags of pills.

20 Q. And where were those bags of pills?

21 A. At the floor by his feet.

22 Q. And ultimately did you grab those, and then those were  
23 taken into custody?

24 A. Yes.

25 Q. Do you recall exactly how many additional baggies of

1 pills were found?

2 A. I believe it was three additional.

3 Q. And for the court's sake, when she's reviewing the  
4 video -- your body-worn camera is on?

5 A. Yes.

6 Q. When she's reviewing the video, Mr. Elmi was in the  
7 backseat of a squad car; is that right?

8 A. Yes, he was.

9 Q. Was there also another individual?

10 A. Yes, there was.

11 Q. So the baggies that were found, whose feet were they by?

12 A. Mr. Elmi's.

13 Q. Were you also made aware, after the individuals were  
14 removed, was another item of interest found?

15 A. Yes. I learned shortly after that that there was a  
16 firearm found in the rear, in the rear of the car.

17 Q. And specifically do you remember which area of the rear  
18 of the car?

19 A. By the spare tire well.

20 Q. Now, as I mentioned, your body-worn cameras are already  
21 in evidence. But for the court's benefit, you get to name  
22 your body-worn cameras when you are kind of saving them and  
23 putting them into the chain of custody, right?

24 A. Yes.

25 Q. And yours are narc, N-A-R-C, underscore, weap,

1 W-E-A-P --

2 A. Correct.

3 Q. -- dash 3 and 4? Is that right?

4 A. That sounds right.

5 Q. And there's additional ones, but for the court's benefit  
6 it's Exhibits 1 and 2.

7 During the body-worn camera, when the court  
8 reviews it, did you express any sort of familiarity with  
9 Mr. Fowzi Elmi and Mr. Fahad Elmi?

10 A. Yes.

11 Q. In fact, did you use the phrase something to the effect  
12 of "Funny how I know that"? Is that right?

13 A. Yes, sir.

14 Q. As Mr. Elmi is being brought out of the vehicle very  
15 initially, he mentions to you that there's an injury to his  
16 leg; is that right?

17 A. Correct.

18 Q. And what was your response?

19 A. I believe my response was -- I asked him what's wrong  
20 with his leg, and I believe he indicated that he had been  
21 shot.

22 Q. Well, were you aware that he had been shot --

23 A. Yes. Yep, yep.

24 Q. And that was the first --

25 COURT REPORTER: Excuse me. Please repeat your

1 question again, Mr. Wesley.

2 BY MR. WESLEY:

3 Q. And was that prior to the June 1st stop?

4 A. Yes.

5 Q. And basically on the video you say, "It's funny how I  
6 know that."

7 A. Correct.

8 Q. And there's a series of those things where you know  
9 things about Mr. Elmi and his brother. And just so the  
10 court's aware, it's because you had prior --

11 A. Familiarity.

12 Q. (Inaudible).

13 A. Correct.

14 COURT REPORTER: Excuse me. You are speaking over  
15 each other.

16 MR. WESLEY: Sorry. My apologies. So let me slow  
17 down.

18 BY MR. WESLEY:

19 Q. So just so the court's aware, there's a series of times  
20 in the video where you expressed basically foresight or  
21 advance knowledge --

22 MR. KUSHNER: Objection. Deleting.

23 THE COURT: The objection is overruled. First of  
24 all, the question has already been asked without objection,  
25 and it's not going to the -- it's not going to material

1 issues, as far as I can understand, unless, Mr. Kushner, you  
2 want to elaborate on your concerns.

3 MR. KUSHNER: Well, you know, I mean, the  
4 prosecution has been leading the witness the whole way, and  
5 I guess at some point I make objections, and so these are  
6 all leading questions. He's completely feeding testimony to  
7 the witness, as he's been doing for the whole hearing, and  
8 I'd ask the -- I'd request that the court instruct the  
9 prosecutor to ask proper questions for direct examination  
10 and not keep providing his own testimony for the witness to  
11 just affirm.

12 THE COURT: All right. Well, as I said, this  
13 objection is overruled because the question has already been  
14 asked, and it's being repeated for the benefit of the court  
15 report, so we have a clear question. To the extent the  
16 examination can proceed consistent with the Rules of  
17 Evidence and so on, that's -- that's what I would expect  
18 from any lawyer here. I've ruled on all the objections that  
19 have been made. So if there are concerns, then they can be  
20 raised in objections.

21 With all of that, Mr. Wesley, you can repeat your  
22 question, please.

23 MR. WESLEY: I wish I could remember the exact  
24 phrasing of it at this point, but essentially I'll ask it  
25 this way.

1 BY MR. WESLEY:

2 Q. Officer Sundberg, if there are any points in the video  
3 where you express future or advance knowledge of what  
4 Mr. Elmi or his brother is going to say, why is it that you  
5 know so much about these two?

6 A. Because I've dealt with them before.

7 Q. Other than locating the items you've described on  
8 Mr. Elmi, did you have any other significant involvement in  
9 this case that's relevant to this particular motions  
10 hearing?

11 A. Not that I can recall.

12 Q. Thank you, Officer Sundberg. I don't have any further  
13 questions for you at this time.

14 A. You are welcome.

15 THE COURT: Okay. Thank you, Mr. Wesley.

16 Mr. Kushner, your cross-examination.

17 CROSS-EXAMINATION

18 BY MR. KUSHNER:

19 Q. Okay. Good afternoon, Officer Sundberg.

20 A. Good afternoon.

21 Q. My name is Jordan Kushner. I don't believe we met  
22 before. I'm the lawyer for Mr. Elmi.

23 So you were -- you've testified you were involved  
24 in this stop of the vehicle where Mr. Elmi was a passenger?

25 A. Yes, I was.

1 Q. And you stated that you were familiar with him from  
2 before?

3 A. Yes.

4 Q. Had you spoken to him or you just knew him through  
5 investigation?

6 A. Through investigations.

7 Q. And where was he seated when you stopped the vehicle?

8 A. In the front passenger seat.

9 Q. And do you know how long he had been in the vehicle  
10 before you stopped it?

11 A. I do not.

12 Q. And who was the driver?

13 A. Of the Toyota?

14 Q. Yes.

15 A. I don't recall.

16 Q. Okay. And there were four passengers -- four people in  
17 the car, four occupants in the vehicle?

18 A. Aside from the driver?

19 Q. Well --

20 A. I believe there were five total.

21 Q. Five. Okay. And so how many -- so were there three in  
22 the backseat?

23 A. Correct.

24 Q. And it's your testimony that -- okay. So you had  
25 everyone exit the vehicle; is that right?



1 A. Yes.

2 Q. And it's your testimony that you performed a weapons  
3 search on Mr. Elmi?

4 A. Yes.

5 Q. And so that would mean a pat search?

6 A. Correct.

7 Q. So you weren't trying to find out what he had on him,  
8 but the purpose of that was just to see if he had any  
9 weapons.

10 A. Correct.

11 Q. And at that point you didn't have probable cause to  
12 arrest him, right?

13 A. At that point, no.

14 Q. All right. But you believe that you had -- had  
15 necessary cause to search him for weapons?

16 A. Yes.

17 Q. And so your testimony is that you -- you found what you  
18 thought was a large amount of money?

19 A. I found a large amount of money. I wasn't sure exactly  
20 what was in his pocket.

21 Q. All right. And where was that located?

22 A. In his right pant pocket.

23 Q. All right. And so you felt a big bulge in his  
24 right-hand pocket?

25 A. Correct.

1 Q. Okay. And it was actually paper currency?

2 A. Correct.

3 Q. Okay. And your testimony is when you felt it, you  
4 didn't know what it was?

5 A. I didn't know exactly what it was, no.

6 Q. Did you ask him what it was?

7 A. I don't recall.

8 Q. Okay. Did you take it out of his pocket --

9 A. Yes, I did.

10 Q. -- right away?

11 A. Yeah.

12 Q. Did you -- you didn't have any reason to believe it was  
13 a gun?

14 A. You can -- Defense Technologies makes a .45 caliber  
15 6-shot that is the size of about two iPhone 6s put together.  
16 It's very small and square. So it's -- aside from that or a  
17 knife --

18 Q. Okay.

19 A. -- there could have been a weapon in his pocket.

20 Q. You've found those kinds of guns on the streets?

21 A. Yes.

22 Q. All right. And then you continued to search down his  
23 pants; is that right?

24 A. Yes.

25 Q. And which did you search first, the right ankle or the

1 left ankle?

2 A. The right.

3 Q. All right. Or I'm sorry. Okay. Was it -- so you --  
4 how did you do that then? Did you go down his pants all the  
5 way to his ankle or did you go up? Did you go up or down?

6 A. I went from his waist to his ankle.

7 Q. All right. And so front and back?

8 A. I don't recall specifically.

9 Q. All right. And where did you -- where did you feel  
10 something? Where on the right side did you feel something?

11 A. In his right sock.

12 Q. In his sock?

13 A. Correct.

14 Q. All right. And so did he have shoes on?

15 A. He did.

16 Q. And so was it the part of the sock inside the shoe or --

17 A. No. Above his shoe.

18 Q. And how large was this -- I mean, so what brought your  
19 attention to that part of the sock?

20 A. It was a reasonably large bulge.

21 Q. And so then what you -- you like took -- took whatever  
22 it was outside the sock?

23 A. I felt it and removed what was pills.

24 Q. All right. And these were -- how many pills?

25 A. I don't know the exact count.

1 Q. Okay. How many bags?

2 A. I believe in the right sock -- in one sock it was two  
3 bags and one sock it was one. It was three total.

4 Q. I'm sorry. I'm -- so in the right sock it was one bag?

5 A. I don't recall if the right sock had two bags or one  
6 bag. I know one sock had two and one had one.

7 Q. And you don't recall how many pills there were?

8 A. No, I wasn't involved in counting them.

9 Q. And what was it? Like more than a hundred?

10 A. It was quite a few.

11 Q. More than a hundred?

12 A. Possible.

13 Q. Now, these pills are very small, right?

14 A. Yes.

15 Q. And so they wouldn't take up much space.

16 A. Enough to -- enough to be noticeable.

17 Q. All right. But at this point you weren't -- you were  
18 only searching for weapons.

19 A. At that time, yes.

20 Q. And pills don't have any resemblance to weapons.

21 A. Not until I came up to it, no.

22 Q. And so when you felt it, it wasn't anything large enough  
23 to be a gun.

24 A. No.

25 Q. And there wasn't -- wasn't even large enough to be a

1 knife.

2 A. No.

3 Q. It didn't feel like a knife.

4 A. No.

5 Q. But you nevertheless removed these items from his sock.

6 A. Correct.

7 Q. And so before you removed them, you didn't -- you didn't  
8 have any idea what it was that was in his sock.

9 A. I believed it to be pills.

10 Q. But you didn't know if it was pills or something else.

11 A. I wasn't one hundred percent certain, no.

12 Q. And at that point, at the point that you were searching  
13 him, there hadn't been any drugs found in the vehicle or on  
14 any of the people there?

15 A. No. It was early in the investigation.

16 Q. All right. And so after you -- you searched the right  
17 ankle and took some bags out of his -- one or more bags out  
18 of his sock and you searched the left, the left leg; is that  
19 right?

20 A. Yes.

21 Q. And then you also found bags in his sock again?

22 A. Yes.

23 Q. And you don't recall how many?

24 A. Again, it was three bags total. I don't recall which  
25 sock had two and which sock had one. I'd have to refer to

1 my --

2 Q. But same situation. It wasn't anything that -- whatever  
3 you felt wasn't anything that resembled a weapon.

4 A. No.

5 Q. And you --

6 A. No.

7 Q. And you suspected they were pills, but you didn't know  
8 if they were pills.

9 A. Correct.

10 Q. Right? I take it, the reason you suspected they might  
11 be pills is because you had heard this information about  
12 some informant saying that they were selling -- that they  
13 were bringing drugs.

14 A. Correct. And once I found the pills in the right sock,  
15 I had reason to believe that they were pills in the left.

16 Q. Now, you testified that there were some bags of pills  
17 found on the floor; is that right?

18 A. Yes.

19 Q. And -- but you didn't find them.

20 A. I did not locate them, no.

21 Q. Do you know who found them?

22 A. It was one of my partners. I don't know specifically  
23 who found them.

24 Q. One of the partners told you he found them.

25 A. Yes.

Q. And that was underneath the front seat?

A. It was at the feet of Mr. Elmi.

Q. Well, Mr. -- Mr. Elmi's feet weren't there when the pills were found, right?

A. I don't recall if he had just been removed from the car. They were transferring him from one squad to another.

Q. So your understanding is that there was pills found at his feet after he left the squad -- after he --

A. After he was placed in the squad.

Q. After he was placed in the squad car.

A. Yes.

Q. So after you had already placed him under arrest.

A. Yes.

MR. KUSHNER: All right. I have no further questions.

THE COURT: Okay. Thank you, Mr. Kushner.

Mr. Wesley.

REDIRECT EXAMINATION

BY MR. WESLEY:

Q. When you were frisking him, but after you found the money and you got to the ankle, what exactly did you feel during the frisk?

A. I felt what I believed to be a bag of pills.

Q. And what exactly about the touch does it make you believe it to be a bag of pills?

1 A. I've just -- over the course of my career, I've felt  
2 bags of pills on a number of people, and it's just -- it's  
3 a -- it's a distinct feeling.

4 Q. And in this particular case were you made aware of what  
5 the tipster said was in the car?

6 A. Yes.

7 Q. And what specifically was in the car?

8 A. Fentanyl pills.

9 Q. And so the court knows, when you're talking fentanyl  
10 pills, are there a bunch of different shapes and sizes or is  
11 it pretty consistent from what you guys are pulling off --

12 A. They're pretty consistent.

13 Q. And what's that consistency?

14 A. They're small blue pills.

15 Q. And, you know, what shape is it?

16 A. Round, typically.

17 Q. And in the video you can see yourself actually  
18 recovering those baggies?

19 A. Yes.

20 Q. With regards to the pills that were in the squad that  
21 was located by another officer, did you do a full-blown  
22 search incident to arrest prior to putting him into that  
23 squad vehicle?

24 A. No.

25 Q. Do you recall a particular phrase you used on the



1 body-worn camera with regard to the shoes and socks that you  
2 removed from Mr. Elmi?

3 A. Yes.

4 Q. What was that term?

5 A. I believe after the pills were found on the floor of the  
6 car, I was surprised because I told one of my partners -- I  
7 said, "I jailed him."

8 Q. And what does "jailed him" mean?

9 A. I spent a number of my -- the beginning of my career  
10 working at the Hennepin County Jail; and when an inmate  
11 first comes in, a defendant first comes in, one of the  
12 things they do when they pat them down is remove their shoes  
13 and socks.

14 Q. So you had removed his shoes and socks, but obviously  
15 there was still pills there?

16 A. Correct.

17 Q. Based on your training and experience working at the  
18 jail, working on the street, are there other areas of a  
19 person's body that they can conceal pills?

20 A. Absolutely.

21 Q. And did you search all those areas of Mr. Elmi prior to  
22 putting him into the vehicle?

23 A. No, I did not.

24 Q. All right. Thank you, Officer Sundberg. I don't have  
25 any further questions for you at this time.

1 A. Thank you.

2 THE COURT: Okay. Mr. Kushner, do you have any  
3 additional cross-examination?

4 MR. KUSHNER: Yes.

5 RECROSS-EXAMINATION

6 BY MR. KUSHNER:

7 Q. So, Officer Sundberg, when you -- when you felt the  
8 object in Mr. Elmi's socks that you said you believed were  
9 pills, were you able to feel the shape of the pills?

10 A. Not the exact shape, but I could feel, you know, the  
11 texture.

12 Q. Okay. And is the texture of these pills any different  
13 than prescription pills?

14 A. Not necessarily.

15 Q. Is it -- is it any different from other -- other kinds  
16 of objects, I mean, other objects that someone could have  
17 besides pills?

18 A. Not by touch, no.

19 Q. You -- you wouldn't know, though, specifically what they  
20 were until you looked at them.

21 A. Correct.

22 Q. And did you actually take off Mr. Elmi's pants in the  
23 course of the search?

24 A. Take them off? No.

25 Q. Was he stripped down to his boxers at some point?

1 A. He may have at the jail, but not at the scene of the  
2 stop.

3 MR. KUSHNER: I don't have anything further.

4 THE COURT: Okay. Thank you.

5 Officer Sundberg, you may step down. Thank you.

6 Mr. Wesley.

7 MR. WESLEY: Your Honor, I don't have any further  
8 witnesses at this time, subject to the earlier discussions  
9 about a continued hearing for Oklahoma and potentially  
10 Officer Grout or unavailable officers.

11 THE COURT: Okay. Thank you.

12 Is there any evidence that you wanted to present  
13 today, Mr. Kushner?

14 MR. KUSHNER: No, not at this time. I will wait  
15 and see what the government presents.

16 THE COURT: Okay.

17 MR. KUSHNER: I did have some discussion with  
18 Mr. Wesley for facilitating in the future that I'm probably  
19 going to want to introduce medical records for Mr. Elmi,  
20 after he got booked into Hennepin County Jail and was  
21 hospitalized thereafter, and so it sounds like we have an  
22 arrangement. I'll send them to him. Mr. Wesley will  
23 probably just introduce them to the court at the next  
24 hearing.

25 THE COURT: Okay. That's -- I'll let counsel work

1       that out, and we'll deal with it at the next hearing.

2               In view of the fact that we still have additional  
3       testimony coming, I assume that counsel do not want me to  
4       set a briefing schedule right now. In other words, you want  
5       to wait to do supplemental briefing until the second  
6       hearing. Is that --

7               MR. KUSHNER: Yeah, I think it makes sense,  
8       especially since we might -- we might still have one or more  
9       witnesses on the same incidents.

10              THE COURT: Certainly. I agree.

11              And, Mr. Wesley, I assume that's your position as  
12       well?

13              MR. WESLEY: It is, Your Honor.

14              THE COURT: All right. Is there anything further  
15       from the government for today then?

16              MR. WESLEY: Not for today, Your Honor. Thank  
17       you.

18              THE COURT: Okay. Thank you.

19              Mr. Kushner, anything further then?

20              MR. KUSHNER: No.

21              THE COURT: Okay. So we will -- my chambers will  
22       work with you to get our next hearing set up, consistent  
23       with the availability of the witnesses and Mr. Elmi's  
24       availability.

25              We're in recess. Thank you.

1 THE CLERK: All rise.

2 (Court adjourned at 2:57 p.m., 06-11-2021.)

3 \* \* \*

4 I, Renee A. Rogge, certify that the foregoing is a  
5 correct transcript from the record of proceedings in the  
6 above-entitled matter.

7 Certified by: /s/Renee A. Rogge  
8 Renee A. Rogge, RMR-CRR

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